

NO. 40983-6-II

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

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STATE OF WASHINGTON, Respondent

v.

JACK DOUGLAS BOOKER, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE BARBARA JOHNSON  
CLARK COUNTY SUPERIOR COURT CAUSE NO.09-1-01108-7

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BRIEF OF RESPONDENT

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Attorneys for Respondent:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

MICHAEL C. KINNIE, WSBA #7869  
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (360) 397-2261

**TABLE OF CONTENTS**

I. STATEMENT OF FACTS ..... 1  
II. RESPONSE TO ASSIGNMENT OF ERROR.....5  
III. CONCLUSION .....11

## TABLE OF AUTHORITIES

### Cases

<u>Aguilar v. State of Texas</u> , 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).....	8, 9
<u>Spinelli v. United States</u> , 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).....	8, 9
<u>State v. Armenta</u> , 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).....	6
<u>State v. Broadaway</u> , 133 Wn.2d 118, 130, 942 P.2d 363 (1997) .....	6
<u>State v. Casal</u> , 103 Wn.2d 812, 816, 699 P.2d 1234 (1985).....	10
<u>State v. Chenoweth</u> , 160 Wn.2d 454, 477, 158 P.3d 595 (2007) .....	7, 8
<u>State v. Cole</u> , 128 Wn.2d 262, 286, 906 P.2d 925 (1995).....	7, 9
<u>State v. Duncan</u> , 81 Wn. App. 70, 76, 912 P.2d 1090, review denied, 130 Wn.2d 1001, 925 P.2d 988 (1996).....	9
<u>State v. Garcia</u> , 63 Wn. App. 868, 875, 824 P.2d 1220 (1992).....	8
<u>State v. Hill</u> , 123 Wn.2d 641, 647, 870 P.2d 313 (1994) .....	6
<u>State v. Horrace</u> , 144 Wn.2d 386, 391-92, 28 P.3d 753 (2001) .....	6
<u>State v. Ibarra</u> , 61 Wn. App. 695, 698, 812 P.2d 114 (1991) .....	8
<u>State v. Jackson</u> , 102 Wn.2d 432, 433, 688 P.2d 136 (1984).....	8, 9, 10
<u>State v. Jacobs</u> , 121 Wn. App. 669, 677, 89 P.3d 232 (2004), rev'd, 154 Wn.2d 596, 115 P.3d 281 (2005).....	9
<u>State v. Lair</u> , 95 Wn.2d 706, 710-11, 630 P.2d 427 (1981).....	10
<u>State v. Madarash</u> , 116 Wn. App. 500, 509, 66 P.3d 682 (2003).....	6
<u>State v. Maxwell</u> , 114 Wn.2d 761, 769, 791 P.2d 223 (1990) .....	7, 8
<u>State v. Pate</u> , 12 Wn. App. 237, 529 P.2d 875 (1974).....	10
<u>State v. Patterson</u> , 83 Wn.2d 49, 58, 515 P.2d 496 (1973).....	7
<u>State v. Remboldt</u> , 64 Wn. App. 505, 509, 827 P.2d 282, review denied, 119 Wn.2d 1005, 832 P.2d 488 (1992).....	7
<u>State v. Seagull</u> , 95 Wn.2d 898, 907, 632 P.2d 44 (1981).....	7
<u>State v. Smith</u> , 93 Wn.2d 329, 352, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S. Ct. 213, 66 L. Ed. 2d 93 (1980).....	7, 10
<u>State v. Sterling</u> , 43 Wn. App. 846, 850, 719 P.2d 1357, review denied, 106 Wn.2d 1017 (1986).....	8
<u>State v. Vickers</u> , 148 Wn.2d 91, 108, 50 P.3d 58 (2002) .....	11
<u>State v. Young</u> , 123 Wn.2d 173, 195, 867 P.2d 593 (1994).....	7, 9
<u>Sunnyside Valley Irrigation Dist. v. Dickie</u> , 149 Wn.2d 873, 879, 73 P.3d 369 (2003).....	6

I. STATEMENT OF FACTS

On June 24, 2009, a search warrant was executed in Clark County on the defendant's residence. Pursuant to the execution of the search warrant, suspected methamphetamine, suspected drug paraphernalia, hand gun, and a stolen motorcycle were found.

This matter came to hearing in the Superior Court on February 26, 2010. The understanding of the parties was that the motion was to be based on the search warrant itself and they were not taking any actual testimony. (RP 41).

The representations made were that on June 18, 2009, Detective Peter Muller from the Clark County Sheriff's Office presented an affidavit for a search warrant to Clark County District Court Judge Vernon Schreiber. The warrant was being sought to search the defendant's residence for items of evidence regarding crimes of Possession of a Controlled Substance – Methamphetamine and other materials dealing with the packaging and preparation of the drugs. A copy of the search warrant is attached hereto and by this reference incorporated herein. (CP 37, the appendices to Motion, Declaration, and Memorandum in Support of Motion to Suppress Evidence). The affidavit for the search warrant

contained information concerning a confidential reliable informant. The information concerning the CRI is as follows:

**FACTORS ESTABLISHING PROBABLE CAUSE:**

In this official capacity, your affiant during the past 72 hours (June 15<sup>th</sup>, 2009 through June 18<sup>th</sup>, 2009) has learned methamphetamine was being possessed and consumed from within the afore-described residence, located in Clark County, State of Washington. This information was obtained from the CRI who is cooperating with law enforcement for a positive recommendation on a pending criminal charge.

I am aware that his CRI has a criminal history which includes felony assault, forgery, and possession of a controlled substance. He/she also has convictions for misdemeanor assault, criminal impersonation, and misdemeanor driving offenses.

Your affiant is aware that this CRI has an extensive knowledge of methamphetamine and used methamphetamine in the past. This CRI is familiar with how methamphetamine is packaged for sale and how it is consumed. This CRI has positively identified methamphetamine. This same CRI has conducted eight controlled buys of methamphetamine and provided information which led to the execution of four search warrants and the arrests of seven persons.

In this official capacity, in the seventy-two hours prior to presentation of this affidavit (June 15<sup>th</sup>, 2009 through June 18<sup>th</sup>, 2009), your affiant was contacted by the same CRI who related he/she was familiar with a person who is in possession, consuming, and distributing methamphetamine from within a residence in Clark County. The CRI further pointed out the aforementioned residence as the residence of Jack Booker.

The CRI was also shown a Clark County booking photo of Jack Booker (d.o.b. 06-16-1958). The CRI, who has personally known Jack Booker for at least one year, immediately identified the person on the photograph as Jack Booker.

The CRI stated he/she has been inside Jack Booker's residence within the past 72 hours and observed Jack Booker with a quantity of methamphetamine in his possession concealed on his body. The methamphetamine was described by the CRI as being contained in a plastic baggy. The CRI also stated he/she has observed many glass methamphetamine pipes in many rooms throughout the residence and out buildings on the property. The CRI has observed Jack Booker to conceal methamphetamine and methamphetamine pipes in places throughout the residence and out buildings to conceal its discovery from law enforcement officials.

The CRI informed me he/she has been in invited guest over at Jack Booker's residence in excess of thirty times and is familiar with Jack Booker's involvement with methamphetamines and stolen property. The CRI stated every time he/she has been inside Booker's residence he/she has observed methamphetamine and drug paraphernalia in Jack Booker's possession. The CRI stated Jack Booker will often conceal methamphetamines on his person and elsewhere in his residence and out buildings.

The CRI stated Jack Booker often takes stolen property for exchange of methamphetamines. The CRI stated some of the stolen property includes but is not limited to stolen vehicle parts, electronics, firearms, construction equipment, and power tools to name a few.

After reviewing the documentation and argument of counsel the court made the following comments:

THE COURT: All right, thank you, counsel. And I did, as I said, review the issue before the oral argument here this afternoon.

Bearing in mind this is a case in which a search warrant was – was issued, the court operates on the presumptions as set forth in counsels’ brief. There is a burden of proof on the party who seeks to challenge the search warrant. It falls upon the defendant.

And the veracity of the informant is often a frequent issue in search warrants of this nature, so we have a number of cases to look to on that issue.

The affidavit set out information for Judge Schreiber to consider, and I would certainly think from reviewing that that Judge Schreiber did consider that the CRI had a criminal history which was disclosed here and that the – there were questions about that that would have been raised in Judge Schreiber’s mind.

However, he was also presented with the specific facts of prior information that had been provided by the confidential informant, prior searches, prior controlled buys and so on.

I do find ultimately I’m going to deny the motion to suppress, finding that there are sufficient indices of reliability and veracity to support the discretionary decision of Judge Schreiber to issue the warrant. The warrant is reviewed on an abuse of discretion status or standard, and the court finds that I think even in Mr. Wood’s argument it is thin a certain ballpark and that this falls on the line of being one which was within an appropriate exercise of discretion by Judge Schreiber.

So I will deny the motion, allow the evidence to be admitted if otherwise identified and so on, other issues regarding authenticity and so on remaining for trial.

-(RP 50, L7 – 51, L20)

The court also then prepared Findings of Fact and Conclusions of Law (CP 73). A copy of those findings is attached hereto and by this reference incorporated herein.

## II. RESPONSE TO ASSIGNMENT OF ERROR

The assignment of error raised by the defendant is a claim that the warrant affidavit failed to demonstrate the informant's veracity and thus did not establish probable cause. The appellant makes it clear that they are not disputing the establishment of the informant's basis of knowledge but rather his/her veracity. The affidavit for the search warrant indicates that the CRI has been able to positively identify methamphetamine in the past and has indicated that he/she has seen it repeatedly in the defendant's possession at his residence. Further, that the CRI has conducted eight controlled buys of methamphetamine and provided information that led to the execution of four search warrants and the arrests of seven persons.

Findings of fact are reviewed under a substantial evidence standard, which requires that there be a sufficient quantum of evidence in the record to persuade a reasonable person that a finding of fact is true.

Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Because neither party challenges the trial court's findings of fact, we treat them as verities on appeal. State v. Madarash, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). If substantial evidence supports a finding of fact, an appellate court should not substitute its judgment for that of the trial court. *Id.* at 879-80. Questions of law are reviewed de novo. *Id.* at 880. The parties' intentions are questions of fact, while the legal consequences of such intentions are questions of law. *Id.*

In our case, the findings of fact entered following the suppression hearing are unchallenged. The rule in Washington is that challenged findings entered after a suppression hearing that are supported by substantial evidence are binding. Unchallenged findings of fact are verities on appeal and an appellate court reviews only those facts to which the appellant has assigned error. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence is "a sufficient quantity of evidence . . . to persuade a fair-minded, rational person of the truth of the finding." State v. Hill, 123 Wn.2d at 644, 647; State v. Horrace, 144 Wn.2d 386, 391-92, 28 P.3d 753 (2001); State v. Ross, 141 Wn.2d 304, 309, 4 P.3d 130 (2000); State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997); State v. Broadaway, 133 Wn.2d 118, 130, 942 P.2d 363 (1997).

State v. Chenoweth, 160 Wn.2d 454, 477, 158 P.3d 595 (2007)

held that a search warrant is “entitled to a presumption of validity.”

Chenoweth, 160 Wn.2d at 477 (citation omitted). The decision to issue a search warrant is highly discretionary. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). A magistrate's determination that a warrant should issue is an exercise of judicial discretion that is reviewed for abuse of discretion. State v. Remboldt, 64 Wn. App. 505, 509, 827 P.2d 282, review denied, 119 Wn.2d 1005, 832 P.2d 488 (1992). This determination generally should be given great deference by a reviewing court. Young, 123 Wn.2d at 195; State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981). A search warrant may issue only upon a determination of probable cause, based upon facts and circumstances sufficient to establish a reasonable inference that criminal activity is occurring or that contraband exists at a certain location. State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S. Ct. 213, 66 L. Ed. 2d 93 (1980); State v. Patterson, 83 Wn.2d 49, 58, 515 P.2d 496 (1973). Probable cause exists when an affidavit supporting a search warrant sets forth facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity. State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994); State v. Maxwell, 114 Wn.2d 761, 769, 791 P.2d 223 (1990). Facts that, standing alone, would not support probable

cause can do so when viewed together with other facts. State v. Garcia, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). A reviewing court generally gives great deference to the magistrate's determination of probable cause and "view[s] the supporting affidavit for a search warrant in a commonsensical manner rather than hypertechnically." Chenoweth, 160 Wn.2d at 477. Accordingly, appellate courts will generally resolve doubts concerning the existence of probable cause in favor of the validity of the search warrant. Chenoweth, 160 Wn.2d at 477.

"[W]hen the existence of probable cause depends on an informant's tip, the affidavit in support of the warrant must establish the basis of the informant's information as well as the credibility of the informant." State v. Ibarra, 61 Wn. App. 695, 698, 812 P.2d 114 (1991) (*citing* State v. Jackson, 102 Wn.2d 432, 433, 688 P.2d 136 (1984); Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969); Aguilar v. State of Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964)). Generally, both prongs of the test must be present to establish probable cause. Jackson, 102 Wn.2d at 437; Ibarra, 61 Wn. App. at 698. If one prong is not satisfied, however, independent police investigation that corroborates the tip can form the basis for probable cause. Maxwell, 114 Wn.2d at 769; Jackson, 102 Wn.2d at 445; State v. Sterling, 43 Wn. App. 846, 850, 719 P.2d 1357, review denied, 106 Wn.2d 1017 (1986). More

than public or innocuous facts must be corroborated. Young, 123 Wn.2d at 195; Jackson, 102 Wn.2d at 448. In Washington, when an informant's tip is the basis for probable cause, the Aguilar-Spinelli test applies. State v. Jackson, 102 Wn.2d 432, 436-38, 443, 688 P.2d 136 (1984). Thus, the affidavit must establish both (1) the informant's credibility; and (2) the informant's basis of knowledge. State v. Cole, 128 Wn.2d 262, 287, 906 P.2d 925 (1995); see also Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964). If either part of the Aguilar-Spinelli test is deficient, an independent police investigation corroborating the informant's information may establish probable cause. Cole, 128 Wn.2d at 287; State v. Jacobs, 121 Wn. App. 669, 677, 89 P.3d 232 (2004), rev'd, 154 Wn.2d 596, 115 P.3d 281 (2005). Information that the informant personally saw the facts asserted and is passing on firsthand information satisfies the basis of knowledge prong. State v. Duncan, 81 Wn. App. 70, 76, 912 P.2d 1090, review denied, 130 Wn.2d 1001, 925 P.2d 988 (1996).

The State must also show that an informant is credible. The affidavit must contain "background facts to support a reasonable inference that the information is credible and without motive to falsify." State v. Cole, 128 Wn.2d 262, 287-88, 906 P.2d 925 (1995). Independent police investigation that corroborates more than public or innocuous facts in the

informant's tip may cure a deficiency in either prong. *Id.* For example, the State can satisfy the credibility prong “by showing that the accusation was a declaration against the informant's penal interest.” State v. Jackson, 102 Wn.2d 432, 437, 688 P.2d 136 (1984). Such admissions of crime are regarded as carrying their own indicia of reliability. State v. Lair, 95 Wn.2d 706, 710-11, 630 P.2d 427 (1981). The State need not disclose an informant's identity where the informant provided information relating only to probable cause rather than the defendant's guilt or innocence. State v. Casal, 103 Wn.2d 812, 816, 699 P.2d 1234 (1985). The most frequent way in which a hearsay informant's credibility is established is by a showing that the informant has previously supplied accurate, helpful information to law enforcement authorities. State v. Pate, 12 Wn. App. 237, 529 P.2d 875 (1974). The existence of a proven “track record” of reliability reasonably supports an inference that the informant is presently telling the truth.

The State submits that the defendant has established a “track record” of reliability. This supports the questions of credibility and reliability on the part of the confidential informant. The burden of proof as to a motion to suppress evidence is upon the moving party. State v. Smith, 50 Wn.2d 408, 314 P.2d 1024, 312 P.2d 652 (1957). Moreover, a Judge’s decision to issue a warrant is reviewed for abuse of discretion, and great

deference is accorded that decision. State v. Vickers, 148 Wn.2d 91, 108, 50 P.3d 58 (2002). Taken together, all of these facts and reasonable inferences clearly show that there was sufficient facts and information in the affidavit by Detective Muller to establish the reliability of the confidential informant in this case. As a consequence, Judge Schreiber did not abuse his discretion in authorizing the search warrant for the subject residence.

### III. CONCLUSION

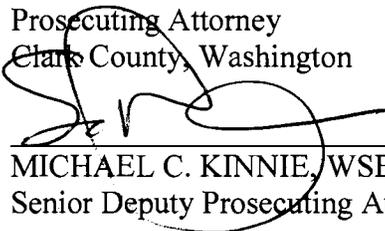
The trial court should be affirmed in all respects.

DATED this 5 day of April, 2011.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:

  
MICHAEL C. KINNIE, WSBA#7869  
Senior Deputy Prosecuting Attorney

16330 for



Judge Schreiber authorized the warrant at 3:45 p.m. on June 18, 2009. The warrant was executed by law enforcement officers on June 24, 2009 at 5:55 p.m.

## II. LAW/ARGUMENT

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution require that a warrant may only issue upon a determination of probable cause. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). “Probable cause is established when an affidavit supporting a search warrant provides sufficient facts for a reasonable person to conclude there is a probability the defendant is involved in criminal activity.” Id.

Washington Courts employ the two part Aguilar-Spinelli test when a confidential informant’s tip is used as part of the basis to establish probable cause. Vickers, 148 Wn.2d at 112. Under this test, the affidavit in support of the search warrant must demonstrate both the informant’s basis of knowledge and the informant’s veracity. Id. at 121.

Aguilar-Spinelli’s knowledge prong is satisfied where the informant has personally witnessed the facts asserted and is passing on firsthand information. See, State v. Duncan, 81 Wn. App. 70, 76, 912 P.2d 1090 (1996); see also, State v. Hankins, 2008 Wash. App. LEXIS 36.

The basis of knowledge prong requires the warrant to set out how they know that the place to be searched may have contraband. Id. In the present case, the CRI stated that he/she has been inside defendant’s residence in the past 72 hours and observed a quantity of methamphetamine on defendant’s person in a plastic baggy. In addition, the CRI stated that he/she “has” observed many glass methamphetamine pipes in many rooms throughout the residence and out buildings

on the property. The CRI has observed defendant to conceal methamphetamine and methamphetamine pipes in places throughout the residence and out buildings to conceal their discovery from law enforcement. The CRI, who has personally known Jack Booker for at least one year...and has been an invited guest and in the residence in excess of thirty times... Based on all this information, we do not challenge the warrant under this prong of Aguilar-Spinelli. However, the defendant does challenge the warrant under the veracity prong of Aguilar-Spinelli.

The veracity prong is satisfied by showing the credibility of the informant or by establishing that the facts and circumstances surrounding the furnishing of the information supports an inference the informant is telling the truth. State v. McCord, 125 Wn. App. 888, 893, 106 P.3d 832, review denied, 155 Wn.2d 1019 (2005). Washington requires a heightened showing of credibility for a citizen informant whose identity is known to police but not revealed to the magistrate. State v. Ibarra, 61 Wn. App. 695, 700, 812 P.2d 114 (1991).

The credibility of a confidential informant depends on whether the informant is a private citizen or a professional informant, and, if a citizen informant, whether his or her identity is known to the police. State v. Ibarra, 61 Wn. App. 695, 699, 812 P.2d 114 (1991). However, Washington requires a heightened showing of credibility for citizen informants whose identity is known to police but not disclosed to the magistrate. Ibarra, 61 Wn. App. at 700. To address concerns that the confidential citizen informant is not an “anonymous troublemaker,” the affidavit must contain “background facts to support a reasonable inference that the information is credible and without motive to falsify.” State v. Cole, 128 Wn.2d at 287-88 (1995) (quoting

Ibarra, 61 Wn. App. at 699-700).

¶In an ideal case a confidential informant will have the following characteristics: the informant provided his or her name and other contact information to police. The informant received no compensation or other reward in return for the tip. A background check revealed nothing to give law enforcement reason to suspect the information provided was false. The informant said his or her reason for coming forward was to assist law enforcement in ridding the community of suspected narcotic manufacturers and traffickers. See, State v. Atchley, 142 Wn. App. 147 (2007). Unfortunately for the prosecution, the informant in this case does not come anywhere close to an ideal informant.

In the present case, the CRI was, of course, unnamed, which calls for a heightened level of scrutiny. Further, the information in the affidavit regarding the CRI reveals that he/she has two convictions for felony assault, forgery, and possession of controlled substance. The informant also has convictions for misdemeanor assault, criminal impersonation and misdemeanor driving offenses. Further, the affidavit also says that the CRI provided the information in an attempt to garner favorable consideration in a pending criminal matter of his/her own. The warrant is silent as to what that criminal charge(s) is. Moreover, when a citizen reports accusations to the police out of self-interest it diminishes the presumption of reliability. Duncan at 78. Therefore, the defense argues that these factors clearly weigh against the reliability and veracity of the informant.

While the defense concedes that the existence of a proven 'track record' of reliability can

reasonably support an inference that the informant is presently telling the truth. See, State v. Lair, 95 Wn.2d at 710 (1981). In the present case, the affidavit does not state that the CRI has a proven track record of reliability with the affiant. Rather, the warrant states that the CRI has conducted eight controlled buys of methamphetamine and provided information which led to the execution of four search warrants and the arrest of seven people.

This begs the question: out of the eight controlled buys undertaken by the CRI how many resulted in the recovery of illicit narcotics? We do not know because the affidavit is silent on this important point. In addition, of the four warrants executed and seven persons arrested, how many of those resulted in either warrants that were upheld as valid or defendants that were convicted of criminal offenses? Again we do not know because the affidavit is silent on this important point. Finally, there is nothing in the warrant regarding how long ago the CRI was involved in either the controlled buys and/or provided the information that resulted in the arrest of seven people.

While most certainly the information in the affidavit is being slanted to try and give the CRI the appearance of reliability, the gapping holes in the most important pieces of information, i.e. the drugs recovered, persons actually convicted via the information supplied by the CRI and how long ago the CRI provided the information that led to the are necessary for a reasonable determination of the reliability of this CRI, given his/her criminal history and motive to fabricate.

If the informant's tip fails under either or both of the two prongs of Aguilar-Spinelli probable cause may yet be established by independent police investigatory work that corroborates the tip

to such an extent that it supports the missing elements of the Aguilar-Spinelli test. State v. Jackson, 102 Wn.2d. at 438 (1984). The police investigation must corroborate the informant's suggestions of criminal activity, and not merely verify innocuous details, commonly known or public facts, or predictable events. Id.

The warrant affiant, Deputy Peter Muller, investigation into the CRI's information consisted of a warrants check that revealed no warrants, but that he was a convicted felon residing at 5810 N.E. 94<sup>th</sup> Avenue, Vancouver, WA. Further, Deputy Muller did a criminal background check and found that he had been convicted of PCS without a prescription and misdemeanor DUII, Deposit of Unwholesome Substances and misdemeanor traffic offenses. The defense argues that the follow up investigation was nothing more than verifying public facts and did not constitute corroboration that actual criminal activity was occurring at the residence.

For example, in Ker v. California, 374 U.S. 23, 83 S.Ct 1623 (1963), a reliable informant told police Ker had been purchasing marijuana from Murphy. This information was apparently hearsay and lacked a basis of knowledge. Surveilling agents, however, observed Ker meeting Murphy, a known marijuana dealer, under circumstances similar to those in which Murphy was known to have made a marijuana sale to another person a day earlier. The Court was unwilling to say that this observation alone amounted to probable cause, but it did give rise to a strong suspicion which was raised to probable cause when considered with the informer's tip.

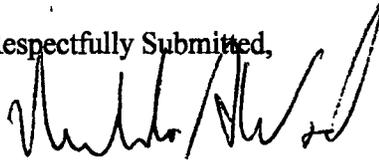
In the present case, the police could have chosen to undertake surveillance like their colleagues in Ker did or they could have chosen to conduct a controlled buy at the residence at

issue. However, the officer in the present case simply chose to conduct a records check. The defense argues that this action does not constitute true independent police corroboration of criminal activity within the spirit and intent of the law.

### III. CONCLUSION

For the reasons stated above, the defendant prays that the honorable court will find that the warrant was issued without probable cause and suppress all evidence obtained as fruit of the poisonous tree. See Wong Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441, 455 (1963)

Respectfully Submitted,



NICHOLAS A. WOOD  
Attorney for Defendant

Law Offices of Wood & Calheim, P.S.  
2901 Main Street  
Vancouver, Washington 98663  
(360) 993-4321

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

STATE OF WASHINGTON

Plaintiff,

vs.

JACK D. BOOKER

Defendant.

No. 09-1-01108-7

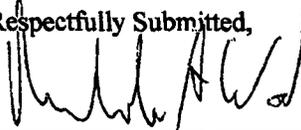
DECLARATION IN SUPPORT OF  
MOTION TO SUPPRESS EVIDENCE

I, Nicholas A. Wood, the court-appointed attorney of the defendant in the present matter do declare under the laws of the State of Washington the following information:

1. Based upon my review of the relevant discovery in this case, I believe the evidence presented by the state would comport with the affidavit in support of search warrant attached to the motion.

2. On behalf of the defendant, we ask that a hearing be held to determine if there was a sufficient basis to approve the warrant at issue in the present case.

Respectfully Submitted,



NICHOLAS A. WOOD, WSBA#36001  
Attorney for Defendant

Law Offices of Wood & Calheim, P.S.  
2901 Main Street  
Vancouver, Washington 98663  
(360) 993-4321



**DISTRICT COURT OF CLARK COUNTY  
STATE OF WASHINGTON**

**FOR THE FOLLOWING INFORMATION / PROPERTY:**

1. Methamphetamine, a substance controlled by the Uniform Controlled Substance Act and 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. Evidence of the crime of Drug Paraphernalia (RCW 69.50.412) to include glass methamphetamine pipes.
4. Paraphernalia for packaging and weighing methamphetamine to include but not limited to plastic baggies, bindles, and digital scales.
5. Personal property to establish dominion and control of the residence.
6. Personal property to establish and confirm the identity of the defendant.
7. Photographs of the crime scene and recovered evidence.

**EXPERTISE OF AFFIANT:**

I am a Deputy Sheriff with the Clark County Sheriff's Department, and have been so employed for the past 18 years. I am currently assigned to the Career Criminal Apprehension Team hereafter referred to as CCAT. CCAT is a task force that works to identify and target for prosecution violent fugitives, repeat offenders, high-risk parolee and probation offenders, and felons who have committed criminal acts within the Southwest Washington area. C-CAT is comprised of officers from the Vancouver Police Department, Clark County Sheriff's Office, Washington State Department of Corrections and United States Marshals Service. I have also spent four years as a Detective with the Clark County Sheriff's office Tactical Detective Unit hereafter referred as TDU. TDU is a unit that investigates a wide range of criminal activity including assaults, property crimes, sexual assaults, violent crimes, and Gang related crimes. I am also a member of the Southwest Washington Regional Swat Team and have been so for approximately 11 years. I have attended the Washington Criminal Justice Training Commission's Academy.

During my tenure as a Deputy Sheriff, I have received hundreds of hours of training and experience in the detection and identification of illegal controlled substances, firearms, interview and interrogation, and investigating crimes ranging from malicious mischief to homicide.

Based on my training and experience I know that persons engaged in the sales of controlled substances (in this case methamphetamine) maintain additional quantities of methamphetamine for later sales. I have found that methamphetamine sellers maintain items that are used in the distribution and sales of methamphetamine to include measuring devices, scales, and packaging items such as plastic baggies,

**DISTRICT COURT OF CLARK COUNTY  
STATE OF WASHINGTON**

1 baggies, and bindles. Methamphetamine sellers often maintain lists, ledgers, or  
2 "drug notes" documenting both the sale and purchase of methamphetamine. They also maintain lists of  
3 their supplier and/or suppliers and the quantities received. These records assist the controlled substance  
4 dealer in his illicit business by providing the dealer with information on who owes him/her money for  
5 drugs. These records also provided the dealer an idea of how much of a particular drug (gram, ounce,  
6 kilogram) that he needs to purchase from his/her source of supply in order to meet the demands/needs of  
7 his/her customer.

8  
9 During the execution of drug related search warrants in which I have been involved, firearms  
10 have been located. Controlled Substance users maintain firearms to protect themselves and their drugs  
11 from theft by other controlled substance users and from seizure by the law enforcement community.

12  
13 I know from my training and experience that people involved in the distribution of  
14 methamphetamine will hide illegal controlled substances in various places to include but not limited to  
15 safes, lock boxes, inner walls, secret compartments, bathroom utilities, mattresses, outbuildings and  
16 adjoining structures. I have located controlled substances hidden in bags, pill bottles, purses, under  
17 drawers, on tables, under furniture, in tool boxes, on persons and several other places. I am seeking to  
18 search all areas of the premises, but know from experience that suspects may not cooperate with officers.  
19 Should the defendant and/or suspects fail to provide officers with a key or combination to said containers,  
20 officers will utilize a cutting device to access said containers. I know from training, knowledge, and  
21 experience that cellular phones, drug records, packaging materials, and firearms are tools of the trade and  
22 instrumentality of the crime of delivery and trafficking of controlled substances.

23  
24 I know from several investigations that used glass methamphetamine pipes contain testable  
25 amounts of methamphetamine inside. I have field tested the contents of at least two methamphetamine  
26 pipes containing a white crystal substance and in both instances the contents of these pipes have field tested  
27 positive for the presence of methamphetamine. I have further arrested subjects in possession of glass  
28 methamphetamine pipes containing a white crystal substance, a portion of which field tested positive for  
29 the presence of methamphetamine. These individuals have been charged and either plead guilty or were  
30 tried on the charge of possession of methamphetamine and subsequently sentenced on the charge  
31 possession of methamphetamine under RCW 69.50.401. In addition these spoons have been tested by the  
32 Washington State Crime Lab for controlled substance analysis and returned with positive test for  
33 methamphetamine.

34  
35 Based upon my training and experience, I know that common items used in the possession of  
36 controlled substances include but are not limited to: digital scales and packaging materials (to include  
37 clean plastic baggies). I also know that these items are commonly kept items (even after the drugs  
38 have been sold, stored at another location, or destroyed prior to seizure). Items such as scales are  
39 commonly kept due to their cost and they are not transitory in nature.

40  
41 From my training and experience I am aware that individuals involved in the  
42 consumption/ingestion of illegal controlled substances will sometimes photograph themselves and others  
43 taking part.

44  
45 I know that photographing the crime scene as well as the recovered evidence is critical to showing  
46 the court the location of an item at the time of recovery.

**DISTRICT COURT OF CLARK COUNTY  
STATE OF WASHINGTON**

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**FACTORS ESTABLISHING PROBABLE CAUSE:**

In this official capacity, your affiant during the past 72 hours (June 15<sup>th</sup>, 2009 through June 18<sup>th</sup>, 2009) has learned methamphetamine was being possessed and consumed from within the aforescribed residence, located in Clark County, State of Washington. This information was obtained from the CRI who is cooperating with law enforcement for a positive recommendation on a pending criminal charge.

I am aware that this CRI has a criminal history which includes felony assault, forgery, and possession of a controlled substance. He/she also has convictions for misdemeanor assault, criminal impersonation, and misdemeanor driving offenses.

Your affiant is aware that this CRI has an extensive knowledge of methamphetamine and used methamphetamine in the past. This CRI is familiar with how methamphetamine is packaged for sale and how it is consumed. This CRI has positively identified methamphetamine. This same CRI has conducted eight controlled buys of methamphetamine and provided information which led to the execution of four search warrants and the arrests of seven persons.

In this official capacity, in the seventy-two hours prior to presentation of this affidavit (June 15<sup>th</sup>, 2009 through June 18<sup>th</sup>, 2009), your affiant was contacted by the same CRI who related he/she was familiar with a person who is in possession, consuming, and distributing methamphetamine from within a residence in Clark County. The CRI further pointed out the aforementioned residence as the residence of Jack Booker.

The CRI was also shown a Clark County booking photo of Jack Booker (d.o.b. 06-16-1958). The CRI, who has personally known Jack Booker for at least one year, immediately identified the person on the photograph as Jack Booker.

The CRI stated he/she has been inside Jack Booker's residence within the past 72 hours and observed Jack Booker with a quantity of methamphetamine in his possession concealed on his body. The methamphetamine was described by the CRI as being contained in a plastic baggy. The CRI also stated he/she has observed many glass methamphetamine pipes in many rooms throughout the residence and out buildings on the property. The CRI has observed Jack Booker to conceal methamphetamine and methamphetamine pipes in places throughout the residence and out buildings to conceal its discovery from law enforcement officials.

The CRI informed me he/she has been an invited guest over at Jack Booker's residence in excess of thirty times and is familiar with Jack Booker's involvement with methamphetamines and stolen property. The CRI stated every time he/she has been inside Booker's residence he/she has observed methamphetamine and drug paraphernalia in Jack Booker's possession. The CRI stated Jack Booker will often conceal methamphetamines on his person and else where in his residence and out buildings.

The CRI stated Jack Booker often takes stolen property for exchange of methamphetamines. The CRI stated some of the stolen property includes but is not limited to stolen vehicle parts, electronics, firearms, construction equipment, and power tools to name a few.

DISTRICT COURT OF CLARK COUNTY  
STATE OF WASHINGTON

1 I conducted a warrants check on Jack Booker and learned he has no current warrants for his arrest.  
2 Jack Booker is listed a convicted felon. Jack Booker's current Washington State identification card shows  
3 him residing at 5810 NE 94<sup>th</sup> ave. Vancouver, WA.  
4

5 Jack Booker was cited and released for driving while suspended/ revoked -3<sup>rd</sup> on 05-22-09 by a  
6 Clark County Deputy Sheriff on patrol. During that contact, booker told the deputy that he is living at  
7 5810 NE 94<sup>th</sup> ave. Vancouver, WA. (case # S09-7179).  
8

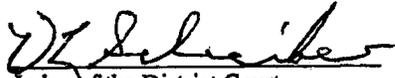
9 I conducted a criminal history of Jack Booker and learned that he has been convicted of a felony  
10 for possession of a controlled substance without a prescription. Jack Booker has also been convicted of two  
11 Gross Misdemeanor crimes (D.U.I. and Deposit of unwholesome substance) and two Misdemeanor  
12 traffic offenses.  
13

14 Based on the foregoing, I believe there is probable cause for the issuance of a Search Warrant  
15 authorizing a search of the aforescribed residence, persons, and for the above-described person and items  
16 and if any are found authorizing the seizure of same.  
17

18 Given under my hand and dated this

19  
20   
21 Deputy Peter Muller  
22 Clark County Sheriff's Office  
23

24 Subscribed and sworn before me this 18 day of Jun, 2009.  
25

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28 Judge of the District Court  
29 Clark County  
30 State of Washington  
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**FILED**

JUN 28 2010

11:20

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
JACK DOUGLAS BOOKER,  
Defendant.

No. 09-1-01108-7

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON  
3.6 HEARING

THIS MATTER having come duly and regularly before the Court on the 26th day of February, 2010, for a 3.6 Hearing, Plaintiff State of Washington appearing by and through Scott S. Ikata, Deputy Prosecuting Attorney for Clark County, State of Washington; and defendant Jack Douglas Booker appearing in person and with his attorney Nick Wood, the court now finds the following facts to have been proven beyond a reasonable doubt:

FINDINGS OF FACT

1. On June 24, 2009, in Clark County, Washington, a search warrant was served on the residence of the defendant, Jack Douglas Booker. Pursuant to the execution of the search warrant, suspected methamphetamine (field tested positive for

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H

1 methamphetamine), suspected drug paraphernalia/pipes, a handgun (defendant Booker  
2 is a convicted felon) and a stolen motorcycle were found.

3 2. On June 18, 2009, Clark County Sheriff's Office (hereinafter CCSO) Detective  
4 Peter Muller had presented an affidavit for a search warrant to Clark County District  
5 Court Judge Vernon Schreiber. Detective Muller sought a warrant to search  
6 defendant's residence for items of evidence regarding crimes of possession of a  
7 controlled substance methamphetamine, possession with intent to deliver a controlled  
8 substance methamphetamine, drug paraphernalia such as pipes, and packaging  
9 material. Judge Schreiber authorized the search warrant on that same day.

10 3. The court operates on the presumptions as set forth in the state's brief that  
11 the burden of proof is on the party who seeks to challenge the search warrant. Here,  
12 the defendant is challenging the warrant. Consequently, the burden falls upon the  
13 defendant to show that the search warrant was somehow defective because the  
14 affidavit for the search warrant lacked information to establish the veracity of the  
15 Confidential Informant (hereinafter CI) to such a degree that the reviewing magistrate  
16 abused his discretion in authorizing the search warrant.

17 4. In this instant case, the affidavit for the search warrant sets forth sufficient  
18 information for Judge Schreiber to consider regarding the CI's veracity or reliability,  
19 which included the information that the CI had a criminal history. This information was  
20 disclosed in the affidavit for Judge Scheiber's review and consideration.

21 5. However, Judge Scheiber was also presented with the specific facts of prior  
22 information which had been provided by the CI to the affiant, regarding prior controlled  
23 buys of methamphetamine, and prior information which led to the execution of  
24 numerous search warrants and arrests.

25 Based on the foregoing Findings of Fact, the court makes the following:  
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CONCLUSIONS OF LAW

1. The Court has jurisdiction of defendant Jack Douglas Booker and the subject matter.

2. There are sufficient indicia of reliability and veracity in the affidavit for the search warrant to support the discretionary decision by Judge Schreiber to issue the search warrant in this case. The warrant is reviewed on an abuse of discretion standard; and the decision by Judge Schreiber was within an appropriate exercise of his discretion.

3. Based on the above, the defendant's motion to suppress the evidence is DENIED.

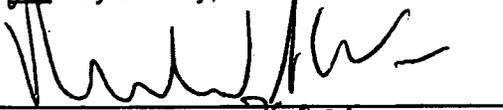
DONE in open Court this 28 day of June, 2010.

  
\_\_\_\_\_  
HONORABLE BARBARA D. JOHNSON  
JUDGE OF THE SUPERIOR COURT

Presented by:

  
\_\_\_\_\_  
Scott S. Ikata, WSBA #36030  
Deputy Prosecuting Attorney

Copy received and approved as to form only  
this 20 day of May, 2010.

  
\_\_\_\_\_  
Nick Wood, WSBA# 20061  
Attorney for Defendant

311  
CN

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

STATE OF WASHINGTON,  
Respondent,

No. 40983-6-II

v.

Clark Co. No. 09-1-01108-7

JACK DOUGLAS BOOKER,  
Appellant.

DECLARATION OF  
TRANSMISSION BY MAILING

STATE OF WASHINGTON )

: ss

COUNTY OF CLARK )

On April 6, 2011, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk  
Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

Catherine E Glinski  
Attorney at Law  
PO BOX 761  
Manchester WA 98353

DOCUMENTS: Brief of Respondent

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

*Jennifer Casey*  
Date: April 6, 2011.  
Place: Vancouver, Washington.