

FILED

DEC 10 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 309771
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON

APPELLANT,

V.

JASON CHARLES YOUKER

RESPONDENT

BRIEF OF APPELLANT

KARL F. SLOAN
Prosecuting Attorney
237 4th Avenue N.
P.O. Box 1130
Okanogan County, Washington

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A. ASSIGNMENTS OF ERROR

1. The trial court judge committed error in findings of fact #1, 4, 5, and 6 of his decision. The findings were not supported by substantial evidence and did not account for the evidence relayed in the affidavit for search warrant.
2. The trial court committed error by conducting its own determination of probable cause instead of assessing whether or not the issuance of the search warrant was an abuse of discretion.
3. The trial court committed error by suppressing evidence where there was probable cause to issue the warrant and the judge's decision to Issue the warrant was not an abuse of discretion.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court judge committed error in basing his findings of fact on partial information contained in the affidavit for search warrant?
2. Did the trial court commit error by conducting its own determination of probable cause instead of assessing whether or not the issuance of the search warrant was an abuse of discretion?
3. Did the trial court commit error by suppressing evidence where there was probable cause to issue the warrant to search the residence and the judge's decision to Issue the warrant was not an abuse of discretion?

C. STATEMENT OF THE CASE

1. Substantive Facts

On May 26, 2012, North Central Washington Narcotics Task Force Detective Steve Brown obtained a search warrant for at the defendant's residence located at 1134 22nd Avenue in Oroville, WA. CP 14-15. The warrant and affidavit was reviewed and signed by Judge Heidi Smith. CP 33.

The warrant was to search for contraband and evidence related to the crimes of possession of controlled substances with intent to deliver. CP 14-15. The search warrant was based on an Affidavit for Search Warrant. CP 15-33. The affidavit set out information about transactions arising from the above address, and included:

The North Central Washington Narcotics Task Force had been receiving information about a suspect going by the nickname "ice man" and/or "ice cream man" who was supplying methamphetamine and heroin in the Oroville area. CP 19.

On 3/25/11, Paulette Robertson and another male (Jason Hotchkiss) were found sitting in a vehicle near Prince's in Oroville. Robertson was involved in selling drugs to a Task Force informant. Deputy Kevin Kinman subsequently pulled over the vehicle and utilized a drug dog on the vehicle. The dog alerted, but no contraband was located. CP 19.

The defendant's residence at 1134 22nd Avenue is located just west of Prince's Department Store in Oroville. RP 21. Officers learned from Oroville Police Department, and named individuals Ledawn Jones and Effren Lopez that people would park near Prince's Department Store because ice man / ice cream man did not like people or their cars coming to his house solely to purchase drugs. RP 21.

On 3/30/11, in a recorded conversation between Robertson and a confidential informant, Robertson advises she and Jason were pulled over and a drug dog was used. Robertson indicates that Jason gave her the "dope" and she put it down her pants and that's why it was not found. CP 20.

On 4/19/11, during another transaction between Robertson and the CI, officers observed a truck later learned to be registered to Mr. Youker, arrive at Robertson's residence. The CI stated that Robertson had identified "Cassie" as the person she called to deliver the "dope" to her that was then delivered to the CI. CP 20. Cassie was determined to be Cassandra Vandever, who was the girlfriend of Mr. Youker. CP 20.

On 5/17/11, Robertson arranged to deliver heroin to the CI. After the CI arrived at Robertson's residence, the truck registered to

Mr. Youker arrived at Robertson's residence, and a male entered Robertson's residence a few minutes before the CI completed the transaction. Detective Brown observed the male arrive in the truck, and then exit the truck and go to Ms. Robertson's residence. RP 20. Det. Wilson and Det. Kim were able to confirm the truck's license plate; and Det. Lewis followed the truck from Robertson's back to the defendant's residence at 1134 22nd Ave. CP 21. Robertson told the CI she was getting the drugs from the "ice cream man" and that he was the one driving the truck that had come. CP 20-21. Robertson told the CI to be very careful when using the drugs and not to use too much at one time. CP 21.

On 5/18/11 officers traced the truck to 1134 22nd Ave, where Mr. Youker resided. CP 21. The truck was registered to Dorothy Youker and Jason Youker. The residence was still listed in Dorothy Youker's name. RP 21. Dorothy Youker died in 2010. RP 21.

On 9/24/11, Oroville officer Hill stopped the truck registered to Youker and identified the driver as Cassandra Vandever. Border Agent Seth Thomas' drug dog alerted to the passenger door of the vehicle. CP 22. Seth Thomas was also a detective with the Task Force. CP 23. While obtaining a search warrant, Mr. Youker arrived and indicated he had been looking for the truck, he was the

registered owner, and Ms. Vandever was his girlfriend. CP 22. From the traffic stop officers were able to identify Ms. Vandever as "Cassie" and the defendant, Jason Youker, as "ice man / ice cream man". CP 22.

On 12/16/11 a CI dealt with Jeffery Clark in an attempt to purchase methamphetamine. Mr. Clark told the CI they could get meth at the "ice man's" house. Officers followed Clark and the CI to the residence at 1134 22nd Ave. twice that day in their attempts to buy methamphetamine from the "ice man". CP 22-23. Clark then contacted the "ice man" and learned he was at the Casino in Okanogan. Approximately one hour earlier, officers had followed Mr. Youker from his house until he left Oroville travelling south on Hwy 97. Clark advised the CI, the "ice man" would be back about 45 minutes later. The transaction was not completed on that date. CP 23.

On 1/14/12, Ledawn Jones advised Det. (Agent) Thomas that she had purchased meth and heroin from the "ice man" through the fence at his home. She indicated he did not like a lot of traffic coming in and out of his house, which is why he dealt with her through the fence. CP 23. Ms. Jones last transaction with "ice man" was approximately two weeks earlier, on 12/29/11. CP 23.

On 2/1/12, Oroville Officer Hill contacted Elizabeth Barton and Effren Lopez near the residence at 1134 22nd Ave. They said they were waiting for a friend. Mr. Lopez said their "friend" did not like people just coming to his house. CP 23. The officer asked if they were going to purchase drugs from Mr. Youker because they were close to Youker's residence. Lopez indicated he did not know the guy's name. CP 23.

On 2/3/12, Oroville officers Hill and Patterson responded to a heroin overdose at the Camaray Motel in Oroville. Upon arrival, they observe a woman (later identified as Teresa Munsey) speaking to the unconscious female (Diedre Whiteaker) who had overdosed. CP 24. Ms. Munsey left the scene after the officers arrived. The motel video surveillance showed that Teresa Munsey was dropped off at the room prior to the overdose occurring. CP 24. The officers were advised by EMT's that Ms. Whiteaker had "fresh" needle marks in her arm. Officers observed what they believed to be heroin and methamphetamine in the room. Officer's also learned that at the time of the overdose, Ms. Munsey was living at 1134 22nd Avenue, Oroville. CP 25-26. In January, Ms. Munsey had moved her motor home from Jeff Clark's property, to the defendant Jason Youker's residence. She then began living in the

Youker residence after being advised that Oroville city regulations did not permit her living in the motorhome parked in Youker's driveway. CP 26.

On February 14, 2012, Oroville Police Chief Clay Warnstaff stopped Ms. Munsey while she was driving the truck registered to Mr. Youker. Ms. Munsey was driving on a suspended license. At the time of the stop, she told the Chief Warnstaff that Mr. Youker was on his way. The defendant Youker arrived shortly thereafter and arranged for his truck to be moved from the scene. CP 26.

On March 2, 2012, Chief Warnstaff advised Det. Brown that a vehicle registered to Edward Boekel was parked at the defendant Youker's residence at 1134 22nd Ave. Det. Brown knew that Boekel resided in Ferry County and had been arrested for selling morphine, hydromorphine, and heroin to a confidential informant in Ferry County. From that investigation, Ferry County Det. Ventura believed that Boekel was supplied drugs from the defendant Youker at the residence at 1134 22nd Ave. CP 27.

Later in the day the Boekel's vehicle was observed traveling up highway 20 toward Ferry County. Tonasket officers Curtis and Rice conducted a traffic stop and confirmed the driver was Mr. Boekel, who was driving while suspended. During the stop Mr.

Boekel refused consent for the officers to search his vehicle for weapons and drugs. CP 27.

On 3/23/12, Ledawn Jones was re-interviewed by Det. Thomas. Ms. Jones stated that she purchased drugs through the fence from the ice man and she would look at him through the fence to make sure it was him. CP 28. Ms. Jones also indicated she would speak with the ice man by phone to arrange deals and observed him deliver drugs to Jeff Clark's property. CP 28. The last time she purchased drugs from the ice man was in his yard. CP 28.

Ms. Jones also indicated John Meslar purchased drugs from the ice man. The Task Force had conducted two separate investigations involving Meslar involving three separate sales of methamphetamine to confidential informants that occurred on Jeff Clark's property. CP 28.

Det. Brown also included a summary of probable cause in the search warrant affidavit to search the residence at 1134 22nd Ave. CP 30-31.

2. Procedural Facts

The defendant filed a motion to suppress the evidence obtained from the search warrant. CP 6. Oral argument occurred June 12, 2012 before Judge John Burchard. *RP 2-3.*

The trial court judge issued his opinion on June 15, 2012, suppressing the evidence seized from the defendant's residence. CP 3-5.

In the decision the Judge Burchard indicated no witness directly identified Jason Youker as "iceman" or "ice cream man". CP 3. The judge stated there was probable cause to find the defendant lived at 1134 22nd Ave. CP 3. But the judge also stated there was no proof that the defendant was the person who called Jeff Clark, when Clark was attempting to purchase drugs from "iceman" with the CI. CP 3-4.

The judge noted that the Task Force officers observed a male arrive and in a truck during a controlled drug transaction at Paulette Robertson's residence, and that they followed the truck back to 1134 22nd Ave. CP 4. The judge found that the "ice man" used the defendant's truck and returned to the defendant's home, but then found it was circumstantial evidence of the "ice man's" identity. CP 4.

The judge also recognized that after the observation at Robertson's residence, the officers identified the "ice man" as the defendant Jason Youker following a traffic stop, but the judge concluded that they did not provide supporting facts. CP 4.

Although LeDawn Jones was named and her criminal history was provided in the affidavit, the judge indicated no information was provide about her credibility. CP 4.

In the judge's Decision, he indicated the court must determine probable cause based solely upon the evidence in the affidavit, however, the judge did not conduct any discussion or make any findings that the issuing magistrate abused her discretion in issuing the warrant. See CP 3-5. The judge stated "*...too much of the case against the defendant is implied or circumstantial.*" and then summarily concluded the affidavit failed to establish probable cause to believe drugs or related material were likely to be found in the defendant's residence. CP 5. The court granted the defendant's motion to suppress the evidence. CP 5.

D. ARGUMENT

- 1. The trial court judge committed error in findings of fact #1, 4, 5, and 6 of his decision. The findings were not supported by substantial evidence and did not**

account for the evidence relayed in the affidavit for search warrant.

An appellate court will review only those findings of facts entered following a motion to suppress to which error has been assigned. *E.g., State v. Ferguson*, 131 Wash.App. 694, 701, 128 P.3d 1271 (2006). A trial court's erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal. *E.g., State v. Hill*, 123 Wash.2d 641, 647, 870 P.2d 313(1994). Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *E.g., Hill*, 123 Wash.2d at 644.

In finding of fact #1, the court found no witness directly stated the defendant was the "ice man" or "ice cream" man. In finding of fact #5, the court found there were not supporting facts to identify the ice man. However, on May 17, 2011, Det. Steve Brown observed the person known as ice man exit the truck and enter Ms. Robertson's residence during a controlled buy. Robertson told the CI she was getting the drugs from the "ice cream man". Detectives then followed the truck back to 1134 22nd Ave. In the affidavit, Det. Brown stated they were able to identify the defendant as "ice man" following a Sept 24, 2011 traffic stop conducted by Oroville PD and

assisted by Det. (and Border Patrol Agent) Thomas. The judge made findings that the "ice man" used the defendant's truck and returned to the defendant's home, but then found the defendant was not identified as "ice man". This is contradicted by the information in the affidavit, including Det. Brown's statement that they were able to identify the defendant as "ice man". Finding of fact # 1 and #5 are not supported by substantial evidence.

In finding of fact #4, the court found the affidavit did not convincingly show the ice man delivered heroin on May 17. However, the affidavit indicates the ice man arrived at Robertson's residence shortly after the CI arrived at the residence. Shortly after the ice man's arrival the CI left and reported the transaction was complete. Robertson told the CI she was getting the drugs from the ice cream man and the CI understood this to be the male who showed up in the truck. The CI believed the ice man was there to pick up money.

The court's finding is not supported. The information indicated the transaction on May 17 was not completed until after the ice man arrived. Even accepting the court's finding that the ice man did not deliver at that moment, and was only picking up money, the court would have to conclude the iceman still delivered

the drugs at some earlier point. Additionally, the drug proceeds collected by iceman would still be contraband. Finding of fact #4 was not supported by substantial evidence

In finding of fact # 6 the court found no information was provided about Ms. Jones credibility. However, Ms. Jones name and criminal history were part of the affidavit. Where an informant's tip is the basis of an affidavit for a search warrant, the courts rely on the *Aguilar –Spinelli* test. This test requires that an "affidavit in support of the warrant must establish the basis of information and credibility of the informant. See *Spinelli v. United States*, 393 U.S. 410 (1969); *Aguilar v. Texas*, 378 U.S. 108 (1964), *State v. Jackson*, 102 Wn.2d 432, 433, 688 P.2d 136 (1984).

To satisfy the basis of information or basis of knowledge part of the test, "the informant must declare that he has personally seen the facts asserted and is passing on firsthand information. If the informant's information is hearsay, the basis of knowledge prong can be satisfied if there is sufficient information so that the hearsay establishes a basis of knowledge." *Jackson* at 437-438. "Under the first prong, facts must be revealed which permit a magistrate to decide whether the informant has a basis for his allegation that a

certain person has committed a crime.” *State v. Riley*, 34 Wn.App 529, 532, 663 P.2d 145 (1983).

An informant’s reliability or veracity may be established in two ways under the *Aguilar-Spinelli* test: “(1) the credibility of the informant may be established by a showing that the informant based his assertions on direct personal observations; *State v. Thompson*, 13 Wash.App. 526, 529-530, 536 P.2d 683 (1975); *State v. Walcott*, 72 Wash.2d 959, 966, 435 P.2d 994 (1967); or (2) even if nothing is known about the informant, the facts and circumstances under which the information was furnished may reasonably support an inference that the informant is telling the truth. *State v. Johnson*, 17 Wash.App. 153, 155, 561 P.2d 701 (1977); *State v. Lair*, 95 Wn.2d 706, 709-710, 630 P.2d 427 (1981). (Citations omitted).

Ms. Jones had direct personal knowledge of the events she described. Additionally her information was corroborated by other information, including attempts by Jeff Clark and the CI to purchase drugs from the ice man at 1134 22nd Avenue; the ice man returning to the residence after the transaction at Robertson’s residence, and information about other buyers waiting near the ice man’s residence because the ice man did not want vehicle traffic

associated with the drug sales at the residence. Finding of fact # 6 was not supported by substantial evidence.

The above findings of fact should not be binding on appeal. The erroneous findings of fact do not support the trial court's subsequent conclusions of law leading to suppression.

2. The trial court's erroneous legal conclusion to suppress is reviewed de novo and should be reversed, where the court did not analyze the issuance of the warrant for an abuse of discretion, but instead made its own probable cause determination.

The issuance of a search warrant is reviewed only for abuse of discretion. *E.g.*, *State v. Maddox*, 152 Wash.2d 499, 509, 98 P.3d 1199 (2004). A reviewing court is required to give great deference to the judge or magistrate determination of probable cause. *E.g.*, *State v. Cole*, 128 Wash.2d 262, 286, 906 P.2d 925 (1995). An application for a search warrant should be judged in the light of common sense with doubts resolved in favor of the warrant. *Cole* at 286, (*citing State v. Young*, 123 Wash.2d 173, 195, 867 P.2d 593 (1994); *State v. Partin*, 88 Wash.2d 899, 904, 567 P.2d 1136 (1977)).

The decision to issue a search warrant is highly discretionary. *Cole* at 286. Accordingly, appellant courts generally

resolve doubts concerning the existence of probable cause in favor of the validity of the search warrant. *E.g.*, *State v. Chenoweth*, 160 Wash.2d 454, 477-478, 158 P.3d 595, 607 (2007). (*citing State v. Vickers*, 148 Wash.2d 91, 108-09, 59 P.3d 58 (2002)).¹

At suppression hearing the trial court acts in an appellate-like capacity. The trial court's review of the issuance of a search warrant is limited to the four corners of the affidavit supporting probable cause; as is any subsequent review by an appellate court. *See e.g.*, *State v. Neth*, 165 Wash.2d 177, 182, 196 P.3d 658, 661 (2008).

¹ The court in *State v. Patterson*, 83 Wash.2d 49, 515 P.2d 496, 500 (1974), reiterated that a lenient standard of review is appropriate in evaluating search warrants:

The constitutional provisions against unlawful searches and seizures are not designed to discourage police and investigative officers from seeking the assessment of independent judicial officers, or to compel the police to take counsel with them at all stages of their investigations. Rather, it is the design of the constitutions to encourage investigating officers to seek the intervention of judicial officers, to require whenever and wherever it is reasonably feasible that the existence or want of probable cause to enter and search a householder's domicile be decided *prima facie* by a judicial officer and not by officers of the executive branch.... In essence, if in the considered judgment of the judicial officer there has been made an adequate showing under oath of circumstances going beyond suspicion and mere personal belief that criminal acts have taken place and that evidence thereof will be found in the premises to be searched, the warrant should be held good.

Patterson, 83 Wash.2d at 57-58; *State v. Chenoweth*, 160 Wash.2d at 477-478. The *Chenoweth* Court also noted that the warrant process itself reduces the risk of an erroneous search or arrest by interposing a neutral and detached magistrate between the citizen and the officer engaged in the often competitive enterprise of ferreting out crime. *Chenoweth*, at 478.

Although an appellate court should also defer to the issuing magistrate's determination of probable cause; the trial court's assessment of that probable cause determination is a legal conclusion that is reviewed de novo. *Id.* (citing *State v. Chamberlin*, 161 Wash.2d 30, 40-41, 162 P.3d 389 (2007)).

In the present case, the trial court in reviewing the issuance of the search warrant, did not give proper deference to the issuing magistrate's decision. The trial court effectively made its own probable cause determination, rather than reviewing the issuance of the warrant for an abuse of discretion. The finding of facts and conclusions of law do not address the abuse of discretion standard, or whether or not the issuing judge actually abused her discretion in issuing the warrant. The trial courts resulting legal conclusion to suppress the evidence was in error and should be reversed.

3. There was probable cause to issue the warrant and the judge's decision to issue the warrant was not an abuse of discretion

The search warrant in this case was issued to permit a search of the residence at 1134 22nd Avenue in Oroville. Even if we accepted the reviewing court's conclusion that there was insufficient evidence that the defendant was the ice man / ice

cream man, there was substantial evidence to find that criminal drug activity was occurring at the residence and that contraband would be found there. Even assuming for argument sake, that ice man and the defendant were two different people, this would not invalidate the search warrant for the residence. Even Judge Burchard agreed the ice man was using the defendant's truck and residence at 1134 22nd Ave.

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. Cole* 128 Wn.2d 262, 287, 906 P.2d 925 (1995) (citing *State v. Smith*, 93 Wash.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 Wash.2d 49, 58, 515 P.2d 496 (1973).

Probable cause exists where the facts and circumstances within the arresting officer's knowledge, for which the officer has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed. See e.g., *State v. Terrovona*, 105 Wash. 2d 632, 643,

716 P.2d 295 (1986); *State v. Fricks*, 91 Wash. 2d 391, 398, 588 P.2d 1328 (1979).

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. *E.g. Cole* at 286. The question whether probable cause exists is an objective inquiry. *State v. Goodman*, 42 Wash. App. 331, 337, 711 P.2d 1057 (1985), *review denied*, 105 Wash. 2d 1012 (1986).²

Evidence, which would be inadmissible at trial, may nevertheless be relied upon in making a probable cause determination. *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct.

² The court in *State v. Remboldt*, 64 Wash. App 505, 827 P.2d 282 (1992), succinctly stated:

The question of probable cause should not be viewed in a hyper-technical manner. In dealing with probable cause ... as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved. A court should not confuse and disregard the difference between what is required to prove guilt and what is required to show probable cause for a search. (*Internal citations omitted*).

Remboldt at 511, (citing *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1949)). In cases involving witnesses or informants, it is sufficient if the affidavit shows the observer provided enough firsthand facts to an individual who possesses the necessary skill, training or experience to link the information given to criminal activity. *State v. Berlin*, 46 Wash.App. 587, 592, 731 P.2d 548 (1987) (where detective interviewed three citizens and was convinced by what they described the defendant was growing marijuana). It does not require that the witness or informant recognize the observed facts are criminal in nature. The information provided by the various informants in this case, taken as a whole clearly provided law enforcement with a basis to conclude criminal activity was occurring.

1302, 93 L.Ed. 1879 (1949); *Bokor v. Department of Licensing*, 74 Wash. App. 523, 874 P.2d 168 (1994). The officer need not have evidence sufficient to prove every element of the crime beyond a reasonable doubt. *State v. Knighten*, 109 Wash. 2d 896, 903, 748 P.2d 1118 (1988); *State v. Rogers*, 70 Wash. App. 626, 855 P.2d 294 (1993), rev. den. 123 Wn.2d 1004 (1994). A reasonable search is one based upon probability - a likelihood that evidence of criminal activity will be found. It does not require even a prima facie showing of guilt. *State v. Patterson*, 83 Wash.2d 49, 55, 515 P.2d 496, 500 (1974).

In issuing the warrant, all which is required is that the magistrate be provided with a reference point by which to determine the probability of criminal activity. A magistrate is entitled to make common sense inferences from the facts and circumstances contained in the affidavit. See *State v. Gross*, 57 Wash.App. 549, 555, 789 P.2d 317 (1990) (citing *State v. Myers*, 35 Wash.App. 543, 549-50, 667 P.2d 1142 (1983), aff'd, 102 Wash.2d 548, 689 P.2d 38 (1984)).

In this case there was not merely inferences, but direct evidence of drug activity originating from the residence. Judge Smith committed no abuse of discretion in approving the search warrant for

the residence at 1134 22nd Ave. There affidavit set out multiple incidents of drug activity tied to the residence and the persons residing at the residence.

Based on the facts presented in this case, Judge Smith was presented with sufficiently reliable facts supporting probable cause to issue the warrant. Under the facts provided in the affidavit, common sense would dictate a finding of probable cause, just as Judge Smith found. Accordingly, her decision should have been given great deference as required by law. Although Judge Burchard indicated in the preamble of his decision that the court should grant “considerable deference” to the issuing magistrate, his actual findings of fact and conclusion of law did not grant any deference, nor provide any basis to find that the issuing magistrate abused her discretion. Judge Smith’s finding of probable cause was not an abuse of discretion. The trial court’s decision should be reversed.

E. CONCLUSION

The findings should not be binding on appeal and the conclusions of law based upon them are in error, where there was not substantial evidence to support the findings.

The trial court did not review the issuance of the warrant under an abuse of discretion standard, but instead made its own probable cause determination. The trial court's erroneous conclusions of law are reviewed de novo and the decision to suppress evidence should be reversed.

There was no abuse of discretion by the judge issuing the warrant where there was ample probable cause to support issuance of the warrant to search the residence.

The trial court's decision to suppress evidence seized under a valid search warrant should be reversed.

Dated this 2 day of December 2012

Respectfully Submitted by:


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Joseph M. Caldwell, Criminal Deputy
Felecia S. Chandler, Juvenile Court Deputy
David Gecas, District Court Deputy
Clayton Hill, District Court Deputy

Civil Division

Stephen Bozarth, Chief Civil Deputy
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Victim-Witness Assistance Program

Susan Hinger, Program Coordinator
Lona Fritts, Program Assistant

Office Administrator
Susan Hinger

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STATE OF WASHINGTON
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August 13, 2012

COA NO. 309771

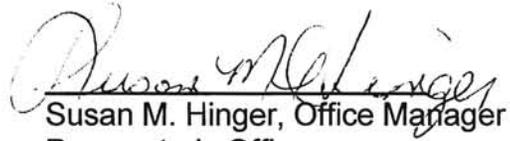
NAME OF CASE: State of Washington v. Jason Youker
Okanogan County Cause No. 12-1-00089-0

I hereby certify under penalty and perjury of the laws of the State of Washington that on the **7th day of December, 2012**, I mailed the original and one copy of the **Appellant's Opening Brief, Certificate of Mailing and Motion for Extension to Time of Filing** to the Court of Appeals and one copy to counsel of record and/or other interested parties by depositing in the mails of the United States of America an addressed envelope with prepaid postage to the following:

The Court of Appeals, Div. III
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