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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 311562

**STATE OF WASHINGTON COURT OF APPEALS
DIVISION THREE**

STATE OF WASHINGTON

Respondent,

v.

PAUL D. BROWNE

Appellant

APPELLANT'S REPLY BRIEF

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ARGUMENT IN REPLY

A. Mr. Browne raised a challenge to probable cause for issuance of the search warrant at the trial court level; however, if Mr. Browne had not, the magistrate granting a warrant lacking probable cause is a manifest error affecting a constitutional right, and Mr. Browne would be allowed to raise the issue on appeal for the first time.

Contrary to the statements of the State, Mr. Browne *did* challenge probable cause at the trial court level. *See RP* at 13-18, *CP* at 33. The climax of Mr. Browne's argument that the affidavit for search warrant was void of information identifying the specifics of the aeronautical search is that the warrant lacked probable cause. *See RP* at 14, *CP* at 33. As stated in Mr. Browne's opening brief, the magistrate had no way to know if Detective Poppie had the qualifications, knowledge, or skills to identify marijuana from the air; the magistrate didn't even know Detective Poppie's first name. *See Opening Brief*, p. 14-16. The magistrate had no way of knowing if Detective Poppie was certified to spot marijuana at 100 feet, 500 feet, or 1000 feet above the ground, and had no way of knowing if Detective Poppie was operating at a level that was certifiable or legal. "There was no probable cause to establish that [Detective Poppie was] in a legal place when [he said he saw marijuana plants]." *RP* at 14.

However, had Mr. Browne *not* challenged probable cause at the trial court level, the challenge could still be raised here.

For an issue to be raised on appeal for the first time, it must be raised in accordance with RAP 2.5. For purposes of this appeal, the error must be manifest and affecting a constitutional right. *See* RAP 2.5(a)(3).

...[T]he proper approach in analyzing alleged constitutional error raised for the first time on appeal involves four steps. First, the reviewing court must make a cursory determination as to whether the alleged error in fact suggests a constitutional issue. Second, the court must determine whether the alleged error is manifest. Essential to this determination is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case. Third, if the court finds the alleged error to be manifest, then the court must address the merits of the constitutional issue. Finally, if the court determines that an error of constitutional import was committed, then, and only then, the court undertakes a harmless error analysis.

State v. Lynn, 67 Wn. App. 339 at 345, 835 P.2d 251 at 254 (1992).

Issuing a warrant lacking probable cause is an error of constitutional magnitude. *See State v. Tan Le*, 103 Wn. App. 354 at 367, 12 P.3d 653 at 367 (2000). Washington State Constitution, Article 1, § VII, states that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The Fourth Amendment to the Constitution of the United States reads as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and *no Warrants shall issue, but upon probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourth Amendment to the Constitution, emphasis added.

A plain reading of both laws logically leads one to believe that if a warrant is issued without probable cause, it is a violation of the Washington State Constitution and the Constitution of the United States. When “Fourth Amendment rights are violated, [it] is an error of constitutional magnitude. Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless.” *Tan Le* at 367, 367.

Issuing a warrant lacking probable cause is a manifest error effecting practical and identifiable consequences in the trial of this case. “In determining whether the error’s consequences were identifiable, the trial record must be sufficient to determine the merits of the claim.” *State v. Haq*, 166 Wn. App. 221 at 246-247, 268 P.3d 997 at 1010 (2012, Division I), *referencing State v. McFarland*, 127 Wash.2d 322 at 333, 899 P.2d 1251 at 1256 (1995). Both the State and Mr. Browne agreed that a probable cause determination was limited to the “four corners of the affidavit;” and there is, therefore, a sufficient record to determine the practical and identifiable consequences for Mr. Browne. *RP* at 15. Had

the affidavit for search warrant been deemed to lack probable cause, any evidence seized as a result of the warrant would be “fruit of the poisonous tree.” Under that doctrine, such violation of the Fourth Amendment requires exclusion of all evidence obtained either directly or indirectly, as a proximate result of the violation of this defendant's rights. *See Wong Sun v. United States*, 371 U.S. 471, 487-88, 92 L.E.2d 441, 83 S.Ct. 407 (1963), *see also Mapp v. Ohio*, 367 U.S. 643 (1961); *Weeks v. United States*, 232 U.S. 383 (1914); *State v. Fry*, 168 Wn.2d 1, 228 P.3d 1 (2010). For Mr. Bowne, the practical and identifiable result of a suppression of all evidence seized as a result of the defective search warrant would be a dismissal of all charges.

Washington State Courts are required, once the error is shown to be manifest, to address the merits of the constitutional issue. *See Lynn*, at 345, 254. Mr. Browne’s arguments against a probable cause determination are outlined in his opening brief, and his reply in section B of this brief. Probable cause is an essential finding for a warrant to be issued under the Fourth Amendment to the Constitution. “[I]f the court determines that an error of constitutional import was committed, then, and only then, the court undertakes a harmless error analysis.” *Lynn*, at 345, 254.

A harmless error is an error which is trivial or formal or merely academic and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case. The standard used to determine whether error is harmless or prejudicial is to ascertain whether it presumptively affected the final result of the trial.

State v. Johnson, 1 Wn. App. 553 at 555, 463 P.2d 205 at 206 (1969).

“[I]f trial error is of constitutional magnitude, prejudice is presumed and the State bears the burden of proving it was harmless beyond a reasonable doubt.” *State v. Coristine*, NO. 86145-5 at 10 (Supreme Court of Washington, May 9th, 2013), *see also State v. Tan Le*, 103 Wn. App. 354, 12 P.3d 653 (2000), *State v. Brown*, 147 Wn.2d 330, 58 P.3d 889 (2002), *Neder v. United States*, 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999).

While Mr. Browne previously raised his objection to the affidavit for search warrant for lack of probable cause, he would still be able to raise it on appeal, for the first time, as it is an issue of constitutional magnitude. If the search warrant had not been issued, no evidence would have been presented at trial; all evidence in this case was seized on August 20th, 2009, as a result of the search warrant affidavit in question. The implications of the denial of dismissal are practical and identifiable; the lack of probable cause in the search warrant affidavit directly conflicts with the Fourth Amendment. The State, who provided substantial case

law on the subject, failed to prove that the error of upholding a probable cause determination was harmless.

Mr. Browne respectfully requests that this Court review his challenges to the affidavit for search warrant.

B. The affidavit for a search warrant lacked probable cause for the issuance of the search warrant on August 20th, 2009.

i. Washington State holds to *Aguilar-Spinelli*; *Gates* argument is invalid.

The State, on pages 10 through 13 of their response brief, primarily references and quotes *Illinois v. Gates*, 462 U.S. 213 (1983), or federal appeals cases relying on *Gates*. Unfortunately for the State, the Washington State Supreme Court has repeatedly rejected *Gates*. See *State v. Jackson*, 102 Wn. 2d 432, 688 P.2d 136 (1984), see also *State v. Chenoweth*, 160 Wn.2d 454, 158 P.3d 595 (2007), *State v. Lyons*, 174 Wn. 2d 354 at 360, 275 P.2d 314 at 317 (2012), see e.g..

In addition, the State quotes *State v. Terrovona*, 105 Wn.2d 632 (1986), *State v. Fricks*, 91 Wn.2d 391 (1979), and *State v. Hendricks*, 25 Wn. App. 775 (1980). Each of those cases dealt with probable cause needed for a *warrantless* arrest of the defendants. Reference or quotation of these three cases in regard to probable cause needed for a magistrate to

issue a search warrant is misguided; there are different and distinct requirements for warrantless arrest and a search warrant. *See e.g., State v. Jorden*, 160 Wn.2d 121 at 126 (2007). The State's quoted cases are inapplicable.

Instead of the standard set forth in *Gates* for the issuance of a search warrant, Washington State has adhered to the *Aguilar-Spinelli* standard when an informant's tip is necessary to a finding of probable cause. *See generally, Jackson*. The most recent case to succinctly discuss the standard is *Lyons*:

To establish probable cause, the affidavit must set forth sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Even though the affidavit may be based on an unidentified informant's tip, the affidavit must contain some of the underlying circumstances that led the informant to believe that evidence could be found at the specified location. *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964). In particular, the affidavit must set forth the underlying circumstances specifically enough that the magistrate can independently judge the validity of both the affiant's and informant's conclusions. *Spinelli v. United States*, 393 U.S. 410, 413, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969)...The facts set forth in the affidavit must support the conclusion that the evidence is probably at the premises to be searched at the time the warrant is issued. *State v. Partin*, 88 Wn.2d 899, 903, 567 P.2d 1136 (1977). We evaluate an affidavit "in a commonsense manner, rather than hypertechnically, and any doubts are resolved in favor of the warrant." *State v. Jackson*, 150 Wn.2d 251, 265, 76 P.3d 217

(2003) (*Jackson II*). However, 'the [reviewing] court must still insist that the magistrate perform his 'neutral and detached' function and not serve merely as a rubber stamp for the police.' *Aguilar*, 378 U.S. at 111 (quoting *Johnson*, 333 U.S. at 13-14).

Lyons 359-360, 316-317.

Mr. Browne maintains that the information provided by the individual identified in the affidavit as "Detective Poppie," without reference or support for his employer¹, first name, experience, education, or certification, amounts to an informant's tip, and is subject to *Aguilar-Spinelli* requirements adhered to by Washington State courts. To comply with *Aguilar-Spinelli*, a two prong test, veracity and basis of knowledge, must be satisfied. *See Jackson at 437, 139-140.*

If Detective Scott had presented an affidavit with information from an individual only described as "an officer with an official agency who said he had training in marijuana spotting,²" would it have been proper for the magistrate to rely upon that information to make a finding of probable cause? We should hope not, but that is precisely what Detective Scott

¹ While the State states in their brief on page 14 that Detective Poppie "was a fellow officer providing details of his observations to Detective Scott," the affidavit for search warrant is void of Detective Poppie's employer; in addition, the "Fellow-Officer Rule" is inapplicable for affidavits for search warrants, as discussed in Argument B(ii) of this brief.

² In *Aguilar v. Texas*, 378 U. S. 108 (1964), the officer's affidavit simply stated "that they had 'received reliable information from a credible person and do believe' that narcotics were being illegally stored on the described premises." *Spinelli v. U.S.*, 393 U.S. 410 at 412 (1969).

stated and what the magistrate did. A *neutral and detached* magistrate would not have made a finding of probable cause on an affidavit where there is no veracity as to who is relaying information to Detective Scott and no basis of knowledge on how this mystery detective is able to identify marijuana from hundreds of feet above the ground. If the magistrate personally knew the first name of Detective Poppie, where he worked, where he got his certification, and his relative experience, from someplace other than the affidavit, there *still* would be no probable cause; Probable cause is contained within the four-corners of the affidavit. See *e.g.*, *State v. Murray*, 110 Wn.2d 706, 709-10, 757 P.2d 487 (1988), *Wong Sun v. United States*, 371 U.S. 471, 481-82, 83 S. Ct. 407, 414, 9 L. Ed. 2d 441 (1963).

The State does not refute Mr. Browne's arguments made under *Aguilar-Spinelli*, and only argues they are inapplicable to this situation under the "Fellow Officer Rule." *If*, however, Detective Poppie's statements are evaluated under *Aguilar-Spinelli*, the affidavit fails, and the State has provided no case law to refute this. In addition, Mr. Browne has been unable to find any case law directly on point in either direction; it appears that a challenge to a search warrant based *entirely* on hearsay from an inadequately identified or qualified government agent has never been brought in this court. Mr. Browne respectfully requests that the warrant be

deemed to lack probable cause, and the case against him be dismissed with prejudice.

ii. Fellow Officer Rule has not been applied to search warrants, only warrantless arrests.

As discussed briefly above, the State argues that any statements made by Detective Poppie are cumulative with Detective Scott's oath to allow for probable cause for a search warrant under the fellow officer rule. *Response Brief, p. 14.* The State references *State v. Maesse*, 29 Wash. App 642, 629 P.2d 1349, rev. denied, 96 Wash.2d 1009 (1981), to support this contention.

In *State v. Maesse*, an officer was allowed to arrest a suspect without a warrant when he was instructed to via radio transmission by a fellow officer who stated that there was probable cause to arrest. *See Maesse* at 645, 1350. A warrantless arrest was made on a juvenile suspected of arson as a result of the radio communications. *Id.* The Court in that case discusses the fellow officer rule in depth, but only in the context of warrantless arrests. *See generally, Maesse.*

The case was most recently cited by the Supreme Court in *State v. Ortega*, 297 P.3d 57 (2013). That case discusses the fellow-officer rule in the context of misdemeanor arrests; the fellow officer rule does not apply. *Id.* at 59.

In addition to these two cases, the case that began the rule, *Whitely v. Warden*, did not actually reference a “fellow officer rule,” but reversed a conviction for a criminal defendant because the affidavit in support of the warrant was insufficient *and* the arresting officer had no corroboration of the informant’s tip to satisfy probable cause for a warrantless arrest. *See Whitely v. Warden, Wyoming State Penitentiary*, 401 U.S. 560 (1971), *see also State v. Ortega*, 297 P.3d 57 (2013).

In Washington, the fellow officer rule is most cited in caselaw and examined in the context of RCW 10.31.100, Arrest Without Warrant. *State v. Ortega*, 297 P.3d 57 (2013).

It appears that the fellow officer rule is only applied in situations involving warrantless arrests. After repeatedly searching caselaw for an analogous situation to his own involving the fellow officer rule, Mr. Browne has been unable to locate a case where an officer has obtained a search warrant affidavit solely on the hearsay of another officer. This is a comforting find, as the allowance and practicality of allowing officers to obtain warrants solely on hearsay from other officers would be a convenient path around the premise of an “oath or affirmation,” required by the Fourth Amendment.

Mr. Browne does differentiate his situation and the affidavit that was granted to search his property, from situations where a large part of

the affidavit is hearsay from other officers but the affiant officer has also contributed to a finding of probable cause. Unfortunately, this was not the case for Mr. Browne, and Detective Scott provided no corroboration or insightful information to the magistrate upon application for warrant.

iii. Marijuana Spotters and *Franks*

Article I, § VII of the Washington State Constitution protects citizens and restrains government agents from unlawful intrusion. Washington State has previously held that it is not an unlawful search if objects are viewed by the unaided eye from a lawful vantage point. See *State v. Myrick*, 102 Wn.2d 506 at 513-514, 688 P.2d 151 at 155 (1984). It is a requirement that the underlying facts or circumstances supporting an officer's belief that illegal activity is occurring or has occurred be made known to the issuing magistrate. See *Spinelli v. U.S.*, 393 U.S. 410 at 412-413 (1969), quoting *Aguilar v. Texas*, 378 U. S. 108 (1964). It is ridiculous to allow a government agent the ability to withhold the conditions of his or her aerial search when the findings of the search are essential for a finding of probable cause. It is only a lawful search if it is done so from a lawful vantage point. See *Myrick* at 514, 155. A magistrate can only determine whether an officer is in a lawful position if the officer provides his or her location in the affidavit. What if an officer

is a mile above ground? Two miles? A magistrate would have no ability to judge the veracity of an officer's allegation.

The State provided a "copy and pasted" email from Detective Scott and Shan Esson (the pilot of the search plane). *CP 51*. The date on the email is about a year and a half after the August 2009 search, but the pilot "remembers it well." *Id.* The pilot writes to Detective Scott that "...*most of the time*, during our search, we exceeded 1,000 ft. AGL (above ground level)...the Multi Function Display (MFD) turns yellow whenever the aircraft moves within 1,000 ft. of the underlying surface. [The pilot] *attempted* to keep the aircraft out of the yellow zone, in compliance with mission criteria..." *Id., emphasis added.* However, later the pilot states that "*at no time* did we violate the [1000 ft.] rule at the suspects location or any other location that was examined during the course of the mission...which included many square miles of search..." *Id., emphasis added.* It is remarkable that a pilot can remember the specifics of a search that occurred a year and a half prior without referencing flight data or records. But it is concerning that the pilot states he *attempted* to maintain the 1000 ft. rule, but later says he "at no time violated this rule." The pilot contradicts himself.

There is nothing preventing an officer from obtaining a warrant after flying terribly low or unrealistically high. The State, most

undoubtedly, would argue that that is why a *Franks* hearing is available, but flight information would only be available after a defendant navigates through the timely, and often costly, process of discovery or cross examination. That is, of course, only if the flight information has been retained. Otherwise they are left to examine the accounts, or, as in this case, a copy and pasted email, created weeks, months, or years, later by the investigating source.

Put plainly, it is an injustice to every citizen to shield officers, overzealous or not, from accountability inherent in the warrant process. If it is not compulsory, but optional, for officers to include altitude and identification method in aerial searches, the fields are fertile for omission of fact and manipulation of the law. In a perfect world, every officer would self-regulate a standard of following caselaw and constitutional guidelines, but unfortunately in the real world that is not the case.

In the affidavit for the search warrant, Detective Scott states that “[a] search of records on the property owners” was conducted. *CP 3*. It is highly doubtful that if a search of the property owners was conducted that a search done less than a year earlier would not have been associated with either the property or Mr. Browne’s name. Mr. Browne also finds it disturbing that the prosecutor on his case, by his own admission, was the

individual who determined that Mr. Browne's son was allowed to keep marijuana plants in 2008. *RP at 21*.

The only case remotely similar to Mr. Browne's is *State v. Quezadas-Gomez*, 165 Wn. App. 593, 297 P.3d 1036 (2011). There, an officer held a controlled drug deal between a confidential informant and the defendant. *Id. at 595-596, 1038*. The CI did not know the defendant's name, only his nickname. *Id.* Days later, the officer saw the vehicle the defendant drove to the controlled buy with the defendant driving. *Id. at 596, 1038*. The officer, having no reason to stop the defendant, stopped him and questioned his name and address. *Id.* The defendant complied. *Id.* The officer then used that information to continue his investigation and further staged controlled buys, ultimately leading to a search warrant and arrest of the defendant. *Id. at 596-597, 1038*.

Division II held that because the officer had the ability to arrest the defendant after the initial controlled buy, the subsequent stop and questioning, as it was much less an infringement upon liberty than an arrest, was permissible and did not meet the criteria of a pre-textual stop set forth in *State v. Ladson*, 138 Wn.2d 343, 979 P.2d 833 (1999). *See Quezadas-Gomez* at 604, 1042.

Mr. Browne's case, obviously, is slightly different. Here, police discussed with Mr. Browne's son his possession of marijuana and

“educated” him. *RP* at 21. Here, police and the prosecutor allowed Mr. Browne’s son, at Mr. Browne’s home location, to continue to possess marijuana plants. A subsequent search, however, is not a much less infringement upon liberty and property than the first. If the magistrate had been given this information they could have considered other issues, like entrapment or medical marijuana, when making his decision. The magistrate in this instance was not given the opportunity.

C. The Trial Court erred in denying Mr. Browne’s motion to dismiss for destruction of evidence.

i. Materially Exculpatory Evidence- Mr. Browne has shown apparent exculpatory value and there was no other comparable evidence.

The number of marijuana plants seized, and where they were seized, from Mr. Browne’s property was absolutely exculpatory. Mr. Browne has maintained that he had at least 40 plants on the property, with three medical marijuana patients, and at no time did he state all the plants were under his care as a provider for his son. Mr. Browne placed the State on notice that the number of plants was at issue, and the evidence was destroyed one day after seizure. If the plants were maintained, Mr. Browne would have been able to show the judge that there were only

enough plants for the patients at that location. This would have allowed him to comply with the affirmative defense as the trial court judge viewed the statute. But the plants are gone. The entire conviction of Mr. Browne rests on the number of plants seized, and Mr. Browne was never allowed to present his count of the marijuana plants to the trial court.

State v. Wittenbarger holds that when “materially exculpatory evidence” has been lost or destroyed, charges must be dismissed. 124 Wn.2d 467, at 475 (1994). It is respectfully requested that the charges against Mr. Browne be dismissed for failure by the State to preserve materially exculpatory evidence.

ii. Potentially Useful Evidence – There was bad faith on behalf of the Douglas County Sheriff’s Office in destroying the medical marijuana.

Mr. Browne reiterates his argument posed in his opening brief. The destruction of evidence one day after it was seized, a month before charges were filed, and by an order signed by the same magistrate that signed the initial search warrant, which was presented by the affiant officer who advised the court that the plants had little evidentiary value, is bad faith. It has already been expressed that the plant count was exculpatory in nature, but at the very least it was potentially useful. If it is potentially useful evidence, Mr. Browne is required to show bad faith on

the part of the police. *See generally, State v. Wittenbarger*, 124 Wn.2d 467 (1994). The facts surrounding the destruction are suspicious and hasty. If the affiant officer had presented a destruction order to the magistrate and made mention that the plants were medical marijuana plants, and that there were multiple patients on the property, the magistrate would have been able to consider whether the evidence was potentially useful.

D. Rebuttable presumption in WAC 246-75-010 DOES apply to possession of marijuana plants, and as such Mr. Ackerman's testimony should have been allowed.

The rebuttable presumption in WAC 246-75-101(3)(c) applies to the entirety of subsection 3. The intent of the Department of Health was to construct a rule that was consistent with the legislative and initiative's intent to provide medical marijuana to patients in need, and assist providers and supplying patients the quantities need for treatment; they were unable to create a "one-size-fits-all" rule. *See Opening Brief, Attachment C*, p. 2. The ability to overcome the presumption with a showing of medical need accounts for this inability.

Grammatically and structurally, the term "presumption" applies to the entire section. A plain reading of this section allows for an

overcoming of the presumption of needed plants. The State has not rebutted this contention.

Instead, it is the State's logic that an individual could grow 1000 plants under this theory. However, using the State's logic would then be applicable to the ounces rule, as well. A patient could, under the presumption, have in their possession four pounds of marijuana for a 60-day supply if they could prove medical necessity. Just as it is unlikely that an individual could present such evidence, it is unlikely that an individual could successfully present evidence of the need to grow 1000 plants.

It is requested that the Court, if unaccepting of the other arguments supporting dismissal, remand this case for a retrial and allowance of the ability to present evidence and testimony of Daniel DeHart's medical need exceeding the 24 ounce and 15 plants presumption set forth in WAC 246-75-101.

E. Conclusion

It is requested that this Court dismiss with prejudice the charges against Mr. Browne for warrant noncompliance with the Fourth Amendment and Washington State Constitution Article I, § VII, and Mr. Browne's Due Process rights. If the Court is unable to do so, it is then requested that this case be remanded for a new trial with the allowance and ability for Mr. Browne to raise an affirmative defense and present

evidence of medical necessity. Furthermore, Mr. Browne would argue that he is unable to present his medical defense due to the fact the evidence was destroyed by the State, and request a dismissal on those grounds.

Respectfully Submitted May 23th, 2013



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6 **COURT OF APPEALS OF THE STATE OF WASHINGTON**

7 **DIVISION III**

8 STATE OF WASHINGTON,
9 Plaintiff/Respondent,

v.

COA No. 311562

10 PAUL DESMOND BROWNE,
11 Defendant/Appellant.

Declaration of Service

12 **I DECLARE**, that my name is Rebekah McIntire, I am a legal assistant for Stiley and
13 Cikutovich, PLLC, I am and at all times hereinafter mentioned, a citizen of the United States
14 and a resident of Spokane County, Washington, over the age of eighteen years, and that on 05-
15 24-13, I mailed a copy of Appellant's Reply Brief, relevant to the above-entitled matter, to the
16 following individuals:

17
18 Steven Michael Clem/Eric Biggar
19 Douglas County Prosecuting Attorney
20 P.O. Box 360
Waterville, WA 98858-0360

Paul Desmond Browne
PO Box 261
Mason, WA 98831-0261

21 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF**
22 **WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.**

23 **Dated 05-24-13**

24 
25 Rebekah McIntire, Legal Assistant

26 DECLARATION OF SERVICE

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