

NO. 33033-8-III

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Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRENT DOUGLAS REEDY,

Appellant.

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BRIEF OF RESPONDENT

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## I. ASSIGNMENTS OF ERROR

### A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant sets forth three assignments of error. These can be summarized as follows;

1. The trial court should have suppressed the evidence seized as result of Officer Bensen's contact with Mr. Reedy's car, because the contact was a pretextual traffic stop.
2. The trial court should have suppress the evidence seized from Mr. Reedy's shop pursuant to the search warrant, because the affidavit does not provide probable cause to issue the search warrant for the home and the shop.
3. There was insufficient evidence to affirm Mr. Reedy's conviction for possession of a controlled substance, because Mr. Reedy did not have constructive possession of the methamphetamine.

### B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The court properly denied the motion to suppress, the initial stop was not a pretext stop.
2. The trail court properly denied the motion to suppress the evidence seized from Reedy's shop.
3. There was sufficient evidence presented for the jury to find Reedy guilty of possession of methamphetamine.

## II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately set forth in appellants brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section. The State shall refer to specific sections of the record as needed. Certain sections shall also be set forth in the appendix to this document.

### III. ARGUMENT

#### **RESPONSE TO ALLEGATION ONE.**

Appellant determined that he would stand by the “four-corners” of the search warrant when he moved for suppression in the trial court. He further specifically indicated that he did not wish to have added testimony from Officer Bonsen, the primary officer, regarding “the Ladson stop.” State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999). This court address Ladson in State v. Rainey, 107 Wn.App. 129, 137, 28 P.3d 10 (2001):

A pretextual traffic stop violates article I, section 7 of the state constitution, because it is a warrantless seizure. State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999). There is a fundamental difference between detaining a citizen to search for evidence of crimes and a stop to enforce the traffic code. Id. at 358 n.10. "The essence of a pretextual traffic stop is that the police stop a citizen, not to enforce the traffic code, but to investigate suspicions unrelated to driving." State v. DeSantiago, 97 Wn. App. 446, 451, 983 P.2d 1173 (1999) (citing Ladson, 138 Wn.2d at 351).

"When determining whether a given stop is pretextual, the court should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior." Ladson, 138 Wn.2d at 358-59. If the court concludes that the search or seizure was unconstitutional, evidence resulting from the search or seizure must be suppressed. Id. at 359.

Because of Reedy’s choice to rely solely on the affidavit from the first search warrant and eschew any additional testimony the trial court relied on that document when it reviewed the actions of Officer Bonsen. It

was acknowledged throughout the argument regarding pretext and probable cause that the “after-market” exhaust was a traffic infraction, “RCW 46.37.39.01” (RP 15, 24-25, 27).

There was discussion between the court and the parties regarding whether Reedy could even make a challenge to the stop being a pretext without the testimony of the officer who made the stop. The State’s position was that there could not be such a challenge without the added testimony. The court stated;

Well, this is Mr. Therrien’s motion. And it may be--and I don’t know. But it may be that he can’t pursue the Ladson issue without actually having testimony presented by live witnesses. I’m not---I think you may be correct in that regard that resting a Ladson challenge on the basis of the affidavit may not be the appropriate vehicle for making that particular challenge. But, it’s his motion. He gets to make that decision. (RP 23)

The totality of the written review by the trial court is as follows;

In the present case, Officer Bensen stated;  
"a vehicle [he] recognized as belonging to Brent Reedy approached the stop sign. The vehicle has an aftermarket exhaust that is louder than provided with a stock vehicle. I contacted Brent and observed he had two passengers. One of which I recognized as Michael White. They stated they were going to the store. All denied any illegal activity. A rear passenger was not wearing a seatbelt and he stated his name was Jerry Reedy. This showed as an AKA for Jerry Dauenhauer, who had a felony warrant through Kittitas County for VIO NCO. He was detained and refused to provide any ID or identifying information."

What is significant in this recitation is the fact the officer did not stop the vehicle. It stopped for the stop sign, and

while stopped, the officer talked with the driver. Even if there was a detention of the vehicle, the loud exhaust justified such action in order to facilitate investigation of the traffic infraction. Continued detention of the vehicle was warranted by two observations made by the officer; (1) the rear passenger was not wearing a seatbelt, which is another traffic infraction, and (2) Michael White was a passenger. The fact that White was a passenger is significant because the officer's conversation with Benjamin Templeman revealed that White had recently left Templeman at 3rd Avenue and Whatcom while White went to buy methamphetamine. It was reasonable for Officer Bensen to conclude from his conversation with Templeman that White was likely in possession of methamphetamine, having consummated the purchase.

In sum, I do not believe this was a pretextual stop. It appears to me the officer acted appropriately and lawfully.  
(CP 100-101)

The Ladson court started the analysis stating;

We begin our analysis by acknowledging the essence of this, and every, pretextual traffic stop is that the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving. Therefore the reasonable articulable suspicion that a traffic infraction has occurred which justifies an exception to the warrant requirement for an ordinary traffic stop does not justify a stop for criminal investigation.

That same court in State v. Chacon Arreola, 176 Wn.2d 284, 290

P.3d 983, 986 (2012) readdressed the issue of pretext stops and ruled:

We hold that a mixed-motive traffic stop is not pretextual so long as the desire to address a suspected traffic infraction (or criminal activity) for which the officer has a reasonable articulable suspicion is an actual, conscious, and independent cause of the traffic stop. So long as a police officer actually, consciously,

and independently determines that a traffic stop is reasonably necessary in order to address a suspected traffic infraction, the stop is not pretextual in violation of article I, section 7, despite other motivations for the stop.

It is important to note that there is not a single instance in the affidavit where Reedy is mentioned by Officer Benson prior to Reedy driving to the intersection where the officer was speaking to Templeman. The information that had been given to Officer Benson, by Templeman, at that time made no mention of Reedy as a possible source for the drugs and Officer Reedy did not observe Mr. White's truck at the Reedy residence when the officer attempted to locate Mr. White after Templeman made the statements against penal interest regarding the purchase of controlled substances.

Based on the information in the "four-corners" of the affidavit, to include the fact Reedy was not mentioned by Templeman, briefing, oral argument and the research completed by the trial court that court ruled that the actions of Officer Benson when he approached Reedy's car when it was legally stopped at the stop sign were not a pretextual act by Officer Benson in furtherance of his investigation of Templeman and White's procurement of controlled substances.

Reedy does not challenge the determination that the initial affidavit did not establish probable cause. Therefore the memorandum ruling by

the trial court regarding that determination is a verity in this appeal.

State v. Downing 151 Wn.2d 265, 272-3 (2004) “We will not disturb the trial court's decision unless the appellant or petitioner makes "a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (citing MacKay v. MacKay, 55 Wn.2d 344, 347 P.2d 1062 (1959)). “The reviewing court finds an abuse of discretion only where no reasonable person would take the position adopted by the trial court.” State v. Huelett, 92 Wn.2d 967, 969, 603 P.2d 1258 (1979). As stated in Robbins v. Department of Labor and Industries, 187 Wn.App. 238, 349 P.3d 59 (Wash.App. Div. 3 2015):

A memorandum opinion may be considered as supplementation of formal findings of fact and conclusions of law. Ellerman v. Centerpoint Prepress, Inc., 143 Wn.2d 514, 523 n.3, 22 P.3d 795 (2001). In [349 P.3d 63] such cases, this court reviews the trial court's letter opinion, findings and conclusions, and judgment as a whole. Meš trovac v. Dep't of Labor & Indus., 142 Wn.App. 693, 702, 176 P.3d 536 (2008), aff'd on other grounds by Kustura v. Dep't of Labor & Indus., 169 Wn.2d 81, 233 P.3d 853 (2010); see also Tae T. Choi v. Sung, 154 Wn.App. 303, 317, 225 P.3d 425 (2010).

## **RESPONSE TO ALLEGATION TWO**

The second search warrant was issued after Officer Benson seized the money and methamphetamine from Appellant’s car. It may be found

at CP 28-32 and has been attached as Appendix A. This warrant was approved by the Honorable Susan Hahn a Superior Court judge for Yakima County. (CP 32)

CrR 3.6(a) permits an evidentiary hearing at the court's discretion. 'It is within the discretion of the trial court to allow oral testimony, in addition to affidavits, when hearing a motion to suppress evidence.' State v. McLaughlin, 74 Wn.2d 301, 303, 444 P.2d 699 (1968). Generally, the trial court has wide discretion to fashion a hearing at a stage of the proceedings where guilt is not an issue. State v. Wolken, 103 Wn.2d 823, 829, 700 P.2d 319 (1985). This court will then review the actions of the trial court for abuse of discretion. Id. However, CrR 3.6(a) requires the moving party to support a suppression motion with an affidavit or document 'setting forth the facts the moving party anticipates will be elicited at a hearing.' The trial court decides whether a hearing is required based on those materials together with any response. CrR 3.6(a). The judge then enters an order denying a hearing and stating the reasons. CrR 3.6(a). The court is not required to enter findings of fact and conclusions of law on a motion to suppress unless an evidentiary hearing is held. CrR 3.6(b).

No findings were entered however the court did enter its memorandum/letter opinion setting for the reasons and legal basis for

finding there was probable cause for the issuance of the search warrants that were issued in this case.

This court set forth an extensive review of this area of the law in State v. Anderson, 105 Wn.App. 223, 19 P.3d 1094 (Div. 3 2001);

A judge's finding of probable cause to issue a warrant is reviewed for abuse of discretion. State v. Garcia, 63 Wash.App. 868, 871, 824 P.2d 1220 (1992) (citing State v. Smith, 93 Wash.2d 329, 352, 610 P.2d 869 (1980)). Great deference is given to the issuing judge's determination of probable cause. State v. Coates, 107 Wash.2d 882, 888, 735 P.2d 64 (1987). All doubts are resolved in favor of the warrant. State v. Kennedy, 72 Wash.App. 244, 248, 864 P.2d 410 (1993). The magistrate is entitled to make commonsense inferences from the facts in the warrant affidavit. *Id.*; State v. Cherry, 61 Wash.App. 301, 304, 810 P.2d 940 (1991). The burden of proof is on the defendant moving for suppression to establish the lack of probable cause. State v. Trasvina, 16 Wash.App. 519, 523, 557 P.2d 368 (1976).

***Scope of Review.*** This court looks at the information available to the issuing judge. State v. Murray, 110 Wash.2d 706, 709-10, 757 P.2d 487 (1988). Facts arising later are immaterial unless they were reasonably inferable at the time the warrant issued. State v. Goble, 88 Wash.App. 503, 508, 945 P.2d 263 (1997).

***Sufficiency of Affidavit.*** Probable cause requires facts sufficient for a reasonable person to conclude that evidence of criminal activity will be found in the place to be searched. State v. Perrone, 119 Wash.2d 538, 551, 834 P.2d 611 (1992). It must establish circumstances that extend beyond mere suspicion or personal belief. State v. Hauser, 19 Wash.App. 506, 509, 576 P.2d 420 (1978). Mere speculation will not do. State v. Rangitsch, 40 Wash.App. 771, 780, 700 P.2d 382 (1985). The magistrate may, however, draw reasonable inferences from the surrounding circumstances. Garcia, 63 Wash.App. at 873, 824 P.2d 1220.

This second warrant affidavit is far more extensive than the first warrant issued for Reedy's car. That warrant set forth more than sufficient information for Superior Court Judge Hahn to find probable cause.

This initial portion of this warrant sets forth the background of the contacts between Officer Bensen and Mr. Templeman the person whom the officer initially contacted on the residential street at approximately 4:30 AM. The location is approximately 2.5 miles from the home Officer Benson knew to be Templeman's home. In that affidavit Templeman states initially that he is waiting for Mr. White who was going to go sell some "gas" to a party who lived in the area. This person to whom the gas was being sold did not know Templeman and "they did not want him there during the transaction." (CP 29) Templeman subsequently changed his story and told the officer that he and Mr. White were actually in the area to purchase methamphetamine from. Templeman did not change the reasoning for his not being allowed to accompany Mr. White to the "transaction." Templeman was a known drug user by Officer Bensen. In addition Templeman is named along with the history between he and Officer Bensen in the affidavit.

Templeman specifically stated that Mr. White was going to buy dope. Mr. White had left in his own truck according to Templeman. Mr.

Templeman also stated that Mr. White was going to purchase between “\$50-100 worth of methamphetamine” CP 29.

The affidavit sets forth that the amount of methamphetamine found in the Reedy care was 13.89 grams or approximately ½ ounce. The officer sets forth his training with regard to amount of this size being common for a dealer in controlled substance. The physical appearance of the methamphetamine is also of import. “This was a solid chunk with no crumbling and now small crystals or powder, indicating it was cleaved off of a larger piece, and very recently.” (CP 31) The officer also indicates that he had observed the Camaro at the Reedy residence and because of the noisy exhaust was able to hear that when it left that residence it came straight to the location where Officer Benson contacted it. (CP 28-31)

Finally, also detailed in this second affidavit is a conversation Reedy had with Office Benson regarding the \$790.00 that was found in his pocket and yet he failed to tell the officer that he had his wallet in the car and that it contained \$5215.00.

The clear indication of this information was that Mr. White and Mr. Templeman had gone to a dealer to buy methamphetamine. That they only had the funds to purchase a small personal use amount of that drug. That Mr. White was found to be in company of Reedy an individual who lives near the location of where Templeman stated Mr. White was going to

purchase drugs, Mr. White was not found on the street in his truck buying those drugs which would allow the inference that the purchase was from a home and then Mr. Reedy, Mr. White and a third man drive directly from the Reedy residence to the location where Mr. Templeman was waiting.

This all in conjunction with the “history of arrests with DEA and Cass County Sheriff’s Office in Minnesota for Possession and Distribution of Methamphetamine gave Judge Hahn more than enough information upon which she could find that there was probable cause to believe that controlled substances would be found in the Reedy residence and authorize the search that residence.

A magistrate's decision that there is sufficient probable cause to issue a search warrant is reviewed for an abuse of discretion. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002), Junker, supra. Appellate courts grant great deference to a magistrate's decision, reviewing affidavits supporting search warrants in the light of common sense. *Id.*; see also State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981). The reviewing court considers only the facts and any commonsense inferences available to the issuing judge at the time the warrant was requested. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004).

When there are doubts concerning the sufficiency of probable cause are generally resolved in favor of the warrant. Vickers, 148 Wn.2d

at 108-09. Reedy had the burden of proof to show insufficient probable cause. State v. Anderson, 105 Wn. App. 223, 229, 19 P.3d 1094 (2001).

"The warrant clause of the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington Constitution require that a search warrant be issued 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." Vickers, 148 Wn.2d at 108. An affidavit supporting a search warrant establishes probable cause if it "provides sufficient facts for a reasonable person to conclude there is a probability the defendant is involved in the criminal activity." *Id.*

As was the case in this warrant when an affidavit requesting a search warrant relies on information provided by an informant, Washington courts use the *Aguilar-Spinelli* test to determine whether the informant's information establishes probable cause. State v. Jackson, 102 Wn.2d 432, 443, 688 P.2d 136 (1984). The *Aguilar-Spinelli* test requires that an affidavit must show (1) the informant's basis for knowledge and (2) the informant's credibility. *Id.* If either prong is not met, independent police investigation corroborating the informant's information may remedy the missing elements. *Id.* at 438. However, such corroboration needs to be more than simply confirming innocuous details or commonly known

facts. *Id.* The reason the courts require the veracity prong is to "evaluate the truthfulness of the informant." State v. Lair, 95 Wn.2d 706, 709, 630 P.2d 427 (1981).

In this instance the information supplied by Mr. Templeman, against his penal interest, is essential to the trial court's determination that there was probable cause for the issuance of the first search warrant and therefore is essential to the courts determination that there was in fact probable cause to search Reedy's residence.

In this instance Templeman's credibility depended 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. Atchley, 142 Wn. App. 147, 162, 173 P.3d 323 (2007). The most common way to establish an informant's credibility is by demonstrating that the informant has previously provided accurate information to law enforcement in the past. Lair, 95 Wn.2d at 710. This was done and is set forth in the affidavit authored by Officer Bonsen. In this instance the State would proffer that Mr. Templeman should also be considered a private citizen informant. When evaluating informants of this type the courts generally relax the veracity prong, generally this type of informant does not have an opportunity to establish a track record with police. State v. Northness, 20 Wn. App. 551, 556, 582 P.2d 546 (1978) Courts will not

relax the veracity standard simply because a citizen informant is identified in the affidavit; identification is only one factor "in determining whether the informant is truly a citizen informant, i.e., an innocent victim or uninvolved witness to criminal activity." Id. at 576. If "[t]he circumstances of the informants' tips raise suspicions they were involved criminally themselves or were otherwise motivated by self-interest," then the "presumption of reliability" is "greatly diminished." Id. at 576-77.

Finally, and critical to this case, courts will be more inclined to decide that an informant is credible if the informant makes a statement contrary to his or her penal interest. State v. Lair, 95 Wn.2d 706, 710-11, 630 P.2d 427 (1981).

### **RESPONSE TO ALLEGATION THREE**

Appellant challenges the sufficiency of the evidence to support his conviction for possession of methamphetamine. In reviewing a challenge to the sufficiency of the evidence, this court will view the evidence in a light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). A defendant claiming insufficiency admits the truth of the State's evidence and all reasonable inferences drawn in favor of the

State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. Circumstantial evidence and direct evidence are equally reliable. State v. Dejarlais, 88 Wash. App. 297, 305, 944 P.2d 1110 (1997), *aff'd*, 136 Wash.2d 939, 969 P.2d 90 (1998).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense." State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974).

The facts presented to the jury were without a doubt sufficient to meet the test set forth in, State v. Bucknell, 183 P.3d 1078, 1080 (WA 2008) "In reviewing a sufficiency of the evidence challenge, the test is whether, after viewing the evidence in a light most favorable to the jury's verdict, any rational trier of fact could have found the essential elements

of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-21, 16 P.2d 628 (1980)”

The testimony of Mr. Templeman was that he and Mr. White had come to the area to purchase methamphetamine. That Mr. White had left Mr. Templeman and gone about a half block and turned. That Mr. Templeman was to wait for White to come back and they were going to share the methamphetamine that White had purchased. It is of note that Mr. Templeman never actual stated that Mr. White was driving anything. He did respond to one question from the State that questioned which direction Mr. White drove. This is of note because Officer Benson was never able to find White’s truck anywhere in the area. There is also no testimony that when White was released he went to his vehicle and drove away. Appellant testified that White “pulled across the road from my house.” This was the very area that had been just searched by Officer Benson who knew White’s truck and did not observe it anywhere Reedy’s residence. (RP 392-4)

The facts as present to the jury indicate that as Officer Bensen was telling the other car to leave he observed the driver of the Camaro, Reedy, lean to his right and reach down. This motion would have moved Appellant towards the passenger side of the vehicle. Next Officer Bensen observed that the passenger, Mr. White “...reached hard from the

left side down towards the floor...” This would have placed this movement into the area where Reedy was just seen moving his hand. Officer Bensen next observed the person in the backseat “put his hands down a little ways.” (RP 399-400)

The officer then requested backup because he was worried that perhaps the occupants were reaching for weapons or hiding something. (RP 400-01) He asked for an additional officer then the two of them began removing the occupants, patting them down, frisking the occupants. The officer then did a visual inspection of the interior of the vehicle specifically the area where there two front seat occupants had been reaching. (RP 401-3) It was in this initial sweep that Officer Bensen observed a sweatshirt between White’s feet. (RP 402) Officer Benson also found Reedy in possession of \$790.00 this was after Reedy stated to the officer that he was unemployed. (RP 402-04) Officer Benson testified that “there was four \$100.00 bills; 1, \$50.00; 15, \$20.00; and 4, \$10.00” and that the amount and manner it was held by Reedy was indicative of an individual involved in the sale of controlled substances. (RP 403-6) The car that was being driven by Reedy was registered in his name. (RP 406) The sweatshirt seen near Mr. White’s feet was identified as his and a methamphetamine pipe was found in the pocket. (RP 407, 409-11) Officer Bensen searched the car pursuant to a search warrant issued on the

night of the stop. (RP 407-9) That search resulted in the seizure of methamphetamine with a net weight of 13.4 grams which is approximately one half ounce. The street value of the methamphetamine was estimated to be between \$700.00 and \$1000.000 (RP 421-22, 425-27) The officer testified he found it;

“Under the passenger side seat, front left corner by the bracket that holds the seat to the floor I found a black plastic---or black piece of plastic that had been torn off or appeared to have been torn off the corner of a bag and inside it had a solid single shard of suspected methamphetamine or what is methamphetamine that was about the size of a golf ball.” (RP 413)

...

It was right here next to the seat bracket on the inside left.... It's right here in the black plastic. Right below the front edge of the seat and beside the seat bracket. (RP 429)

Also found in Appellant's car, on the driver's seat was his wallet.

Within that wallet were cards indicating the wallet belonged to Reedy along with \$4,425.00 in currency. There were “29, \$100.00 bills; there was 3, \$50.00 bills; 59, \$20.00 bills; 14, \$10.00; and 11, \$5.00.” (RP 433) Officer Bosen testified that the amount and denominations were consistent with money from drug sales. (RP 433-5) In addition to the drugs, money and smoking pipe Officer Bosen found an opening cut into the car that he, from his background, training and knowledge, believed had been created to allow drugs to be hidden in the compartment that had been

created. (RP 436-42) Also found in the wallet that was abandon on the car seat when Reedy exited were “a Costco Executive Member card with the defendant’s picture and name on it. A Visa debit card with his name on it. A state medical coupon card with his name on it. The defendant’s hunter education training certificate. Community Health Plan card with his name on it. Actually, two Community Health Plan cards with his name on it. And then a scrap of paper with some phone numbers on it....some children’s pictures in a plastic folder. It’s a Washington State Catch Record card. 2012 Resident Freshwater and Steelhead Recreational Fishing License with the defendant’s name on it. And it was dated July 4th, 2012. Another catch record.” (RP 458)

When the original \$790.00 in currency was taken from the person of Reedy Officer Benson asked him had any more money and all that was presented was the initial cash and as no time did Reedy state to the officer that his wallet was in the car when it was seized and impounded. (RP 459-60)

While there were no additional methamphetamine found at the Reedy residence it is clear that the jury was focused on the packaging that held the drugs found in the car. (RP 548) The jury asked one question “may we see the bag that had the meth in it?” (RP 888) The testimony of Officer Bonsen regarding the packaging of the drugs found in Reedy’s car

was “I found a black plastic---or black piece of plastic that had been torn off or appeared to have been torn off the corner of a bag...” (RP 413, 429-30, 479)

CAMP: Okay. Now, the methamphetamine found in the vehicle, what type of bag was it in?

BONSEN: It was found in a black plastic, um, like the corner of a small bag.

CAMP: Did you find any material that was similar to that in the shop?

BONSEN: I did. (RP 479)

The State presented extensive testimony regarding black plastic that was found in the search of the Reedy property. The testimony was that there were actual similar bags with the corners ripped off of them found in more than one location. Officer Bonsen “This is a picture of a black plastic bag that’s had the corner torn off. Um, as if something was dropped in it and sealed in it.” (RP 486)

The extensive testimony regarding this packaging material found at the Reedy residence and the material the methamphetamine was found in in Reedy’s car was very essential in proving that the drugs found in Appellant’s car were his. This was a critical connection to Reedy and it is clear from the question asked by the jury during deliberations that this critical nature of this testimony was not lost on the jury. (RP 479-87)

The defendant’s testimony refutes that it was Mr. White’s drugs found in the car. Reedy testified that Mr. White had just appeared at his

house in the early morning and the defendant asked him if he, Mr. White wanted to ride with him. He stated that “Mike White pulled across the road from my house. We were getting in my Camaro and Mike White walked straight from his rig and got in my Camaro...” (RP 732, 761)

Officer Bensen testified that he never located Mr. White’s truck. (RP 390-

7) Officer Bensen was brought back as a rebuttal witness and testified as follows;

CAMP: Officer Bensen, first question; on August 15, 2012, when you were talking with Mr. Templeman did you ever see Michael White’s truck on Whatcom Street---Whatcom Avenue or---yes. On Whatcom Avenue?

BONSEN: No. I did not.

CAMP: Okay. Would that have been something you would’ve taken note of?

BONSEN: As it was the subject of my investigation at that point; yes. It would’ve. (RP 796)

The testimony of Reedy was that Officer Bensen was “yelling at me about the exhaust...So he started yelling at me about the exhaust when I stopped.” (RP 739) “...when he started yelling at me about the exhaust I was getting my license and insurance out at that time and then I just got my license and insurance because I keep them right there together. And then I set my wallet right beside the seat. (RP 743)

When taken in totality this testimony was more than sufficient to allow the jury to find that the methamphetamine that was found in Reedy’s

car was in fact possessed by him and therefore the State had proven beyond a reasonable doubt that Reedy was in “possession” whether actual or constructive, of the drugs that were found in his car.

IV. CONCLUSION

The information available to the issuing magistrate and therefore the superior court upon review of the first affidavit demonstrates that the actions of Officer Benson when he contacted Mr. Reedy were not a pretext. This warrant is only being challenged by Reedy on the basis that the action of the officer were pretextual. The second warrant is being challenged on the basis of sufficiency of the evidence. Reedy alleges that there was insufficient evidence presented to Judge Hahn to find probable cause that his residence had drugs within. This is refuted by the facts and law set forth above. Finally, Reedy claims there was insufficient evidence presented to the jury to allow that impartial panel to determine that he was in possession of the methamphetamine that was found under the seat in a portion of a black plastic bag in an area where Officer Denson had observed both Reedy and Mr. White reaching after the initial stop.

For the reasons set forth above this court should deny this appeal.

Respectfully submitted this 14<sup>th</sup> day of December 2015,

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/

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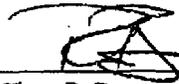
# APPENDIX A



120004099

THE HONORABLE JUDGE SUSAN L. HAIN 01749  
Printed or typed name of Judge/comm.

THIS WARRANT was issued by the above Judge, pursuant to the telephone warrant procedure authorized by JCrR 2.10 and CrR 2.3 on the 15th day of August 2012, at ~~1749~~ am/pm

 #440  
Officer R. Bosen 440 Union Gap Police Department  
Signature of Peace Officer Authorized  
To Affix Judges Signature on Warrant

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FILED

*SUPERIOR*  
IN THE ~~DISTRICT~~ COURT OF THE STATE OF WASHINGTON

2012 AUG 17 P 3:05

IN AND FOR YAKIMA COUNTY

SW-12-054

STATE OF WASHINGTON )  
COUNTY OF YAKIMA ) ss.  
SUPERIOR COURT )  
County of Yakima )

TELEPHONIC AFFIDAVIT FOR SEARCH WARRANT

Officer Ryan Bensen #440, being first duly sworn upon oath, before the undersigned Judge of the Yakima County-District Court, deposes and says:

*SUPERIOR*

That he is a duly commissioned law-enforcement officer with the Union Gap Police Department, and that he has probable cause to believe and does believe that there is evidence relevant to the commission of the crime(s) VUCSA-Possession of Methamphetamine.

to wit: Narcotics to include Methamphetamine, as well as paraphernalia for ingestion, manufacture and packaging, documents of dominion and control and currency.

Documentation showing dominion and control, being stored in violation of the laws of the State of Washington, in a residence more particularly described as follows:

2017 S. 4<sup>th</sup> Avenue, City of Union Gap, County of Yakima, State of Washington. The residence is a single family home, off white in color with a green metal roof. There are french style doors that face to the west, and a covered style porch to the south. There are numerous vehicles and a boat parked on the property. There is a large shop behind the residence, which is also off white in color with a green metal roof and roll up doors. There is a mailbox in front of the house that bears the numbers 2017 written in black marker.

Said residence is presently located at, 2017 S. 4<sup>th</sup> Avenue, city of Union Gap, County of Yakima, State of Washington.

That said probable cause is based upon the following:

I am a commissioned police officer for the city of Union Gap. I have been so employed since 06-01-12. Previous to that, I was a commissioned deputy sheriff for the Whatcom County Sheriff's Office, a commission I held from 07-02 until 05-31-12. Previous to that, I was a commissioned reserve deputy for the Whitman County Sheriff's Office. In my previous 12 years as a commissioned Law Enforcement Officer, I have participated in many narcotics related investigations, ranging from street level possession investigations, to mid level sales, to Federal drug trafficking investigations. I was a member of the WCSO criminal interdiction team, a proactive patrol unit that worked closely with the Northwest Regional Drug Task Force in Whatcom County and along the international border.

On 08-15-12 at approximately 0428 hours, I was patrolling the City of Union Gap. I contacted a male standing at the corner of 3<sup>rd</sup> Avenue and Whatcom Street socially. I recognized him from previous contacts as Benjamin Templeman. He is an admitted methamphetamine user, and I have previously contacted him in reference to a theft on 07-25-12. During that investigation, Benjamin provided information that he was present when Phillip Butler stole a toolbox. The toolbox was not recovered, but Benjamin provided statements against self interest, and also provided reliable information that Phillip was involved in the incident. At that time, he also provided information about the local methamphetamine trade, and named suspects that are involved.

When I contacted Benjamin on 08-15-12, he was standing at the corner of 3<sup>rd</sup> Avenue and Whatcom Street. I know he lives at 208 Emma Street, which is approximately 2.5 miles driving distance away. I know that Benjamin does not drive, and at 0430 hours, has no legitimate business being at that location. When I contacted Benjamin he told me that he was with Michael White, who dropped him off on the corner so he could call 33033 8-000000028

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Benjamin said he did not know exactly which house Michael was going to, but he indicated that he had turned southbound on 4<sup>th</sup> Avenue. Benjamin told me Michael was making him wait because the people he was visiting did not know Benjamin, and they did not want him there during the transaction.

I have previously contacted Michael in reference to a stolen vehicle (06-17-12 UGPD Case # 12U002978). During that contact, he told me that he has struggled with a methamphetamine addiction.

I told Benjamin that it was not normal to be selling gasoline at 0430 hours, and it did not make sense that he would be left on the corner to wait while it happened. Based on the earlier theft, as well as his position near the street, I suspected Benjamin was possibly acting as a lookout for someone possibly prowling vehicles or burglarizing houses. I told Benjamin I did not believe his story, and I told him I thought it was likely he was involved in criminal activity. Based on his statements that he was left to wait because the residents were not familiar with him, his previous statements that he is a methamphetamine user as well as my knowledge, training and experience of narcotics deals, I felt it was likely he was left behind to avoid the possibility he could provide information about suspect identity. I confronted Benjamin about my suspicions about a possible narcotics transaction. Benjamin told me that I was correct, and he told me that Michael was going to buy "dope". I asked him what kind, and he told me "meth". I asked him how much Michael was going to buy, and Benjamin told me that Michael was going to buy \$50-\$100 worth of methamphetamine. When I asked Benjamin how much he was getting for acting as the lookout, he told me he was not a lookout, but immediately made a statement against self interest by stating that Michael was going to give him some methamphetamine when he returned. Benjamin told me he did not know how much Methamphetamine Michael was going to give him, but indicated he was going to smoke methamphetamine with Michael when he returned. Benjamin described Michael's vehicle. Benjamin waited with Officer Thompson while I checked the area for the vehicle. I did not locate Michael's tan and brown pickup truck, which I am familiar with.

I returned to the scene. While returning to the scene, I passed Brent Reedy's residence at 2017 S. 4<sup>th</sup> Avenue. I know from my work experience in Union Gap that Brent has been involved in or suspected of possession of stolen vehicles. I have also witnessed numerous different vehicles that are at the residence at infrequent, changing hours. On this date, I observed a red Jeep Cherokee parked in the driveway, and I also noticed that Brent's vehicle, a Red 1994 Camaro, WA AER 2598, parked on the street. I noticed the vehicles parked at the residence throughout my shift, and they were both present when I checked the neighborhood for Michael White.

I continued to speak to Benjamin about his methamphetamine addiction, as well as possibilities for treatment and a successful rehabilitation for him. I provided possible solutions, and Benjamin was very receptive, indicating several times that he is ready to quit using methamphetamine and willing to undergo treatment. In my law enforcement career, I have spoken to hundreds of drug addicts and have observed distinct personalities based on their progression of addiction. Benjamin appeared to have hit rock bottom, and has realized that his life will continue in the same fashion if he does not work to stay sober. Benjamin admitted he is using every day, or every other day, and he knows that he must quit if he is to have a normal life. Benjamin was very frank, truthful and honest during our conversation.

As I spoke to Benjamin, I heard a vehicle start in the 2000 block of 4<sup>th</sup> Avenue, and I saw headlights northbound. When the vehicle turned the corner, I observed it was Brent Reedy's red Camaro, followed by the Red Jeep. The vehicle approached me eastbound from 4<sup>th</sup> Avenue on Whatcom Street. I heard the vehicle has a louder than stock, performance exhaust on the vehicle. I have also been told by other Officers that he has already been warned for the use of the exhaust system on his car. At that time, I did not know that Brent was possibly involved in the matter at hand. I suspended my conversation with Benjamin to contact the vehicle about the defective, loud exhaust. As the red Camaro came to a stop at the stop sign. I stepped off the curb on the passenger side and made a motion to the passenger to roll the window down so I could contact the driver. I did not activate any emergency lights, as my vehicle was parked approximately 30 feet north of my location. I was in full uniform and clearly identifiable to the occupants as a police officer. As I contacted the vehicle, I immediately recognized the front seat passenger from previous contacts as Michael White. His presence in Brent Reedy's vehicle corroborated Ben's information that Michael was in the area possibly involved in a drug deal because I know that Brent lives within a short distance, and has also been suspected of methamphetamine related crimes.

I observed Michael's left hand was out of sight and shielded from my view to the left of his left leg. I observed the rear passenger side seat was occupied, and the male had his left hand obscured un 33033 8-000000029

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identification of Michael, the information that he was possibly involved in a drug deal, his presence in Brent Reedy's vehicle, the fact I was outnumbered three to one, I asked the rear passenger and Michael to both place their hands where I could observe them during the traffic stop. When the rear passenger moved his left hand, I saw that his seatbelt buckle was not latched, and there was not even a female portion of the buckle visible on the passenger side. He was holding the buckle to make it look like the seatbelt was fastened. I asked the male his name and he responded by saying "Jerry Reedy". As I spoke with Brent, he told me that he, Michael and Jerry had just left his house at 2017 S. 4th Avenue, and were going to the store. Brent said they had not stopped anywhere else before me contacting them. At that time I requested a back up unit respond.

As I made the contact with the occupants of the Camaro, the red Jeep Cherokee came to a stop behind us, illuminating me in their headlights and partially blinding me. I contacted the driver and asked her to leave. While I spoke to her, I observed the occupants of the Camaro, were making furtive movements. Brent was shifting left and right, and was reaching to his right hip area. The front passenger made a motion from his left thigh area to the area immediately in front of and between his passenger seat and the center console, and the rear passenger also lowered his hand from view. I observed what appeared to be a backpack between the front seat passenger's feet, but it later turned out to be a sweatshirt. Michael reached down towards the sweatshirt at least twice after being told to keep his hands in view.

As the red Jeep left the area, Officer Thompson arrived and I directed him to contact Michael. I explained that Michael needed to be patted for weapons due to his furtive movements and his strong reaching movement towards the floor boards. I directed Brent out of the vehicle with his insurance, driver's license and registration, and based on his furtive movements, I conducted a brief pat frisk for weapons on Brent while Officer Thompson conducted a brief pat frisk on Michael. Due to the fact we were outnumbered, and all three of the suspects were markedly larger than Officer Thompson and I, I detained Brent briefly in handcuffs. I intended to perform a vehicle frisk limited to the lunge area where I saw Michael make the strong reaching movement. I asked Jerry to step out of the vehicle and asked him if he had any weapons. He stated he had a pocket knife, and I conducted a pat frisk for weapons. I removed the knife and asked Jerry and Brent to wait with Officer Thompson and Michael near the rear of the ~~car~~ car while I conducted the vehicle frisk. I checked Michael's lunge area directly in front of and beside the seat and did not observe any weapons. I then directed Officer Thompson to remove the handcuffs from Brent so I could continue speaking with him.

"Jerry Reedy" was learned to be an AKA for Jerry Dauenhauer, who had a felony warrant for his arrest through Kittitas County. He refused to identify himself or cooperate in any way. Significant time was dedicated to communicating with SunComm and Kittitas County to determine his identity, and confirm his identity via photos.

Based on the statements that Michael was in the area to purchase drugs, the fact that Michael was located in time and place contemporaneous to those statements and location, the very early hour, as well as the furtive movements by all occupants, including the strong reaching motion from Michael, and my own conversation with Michael where he indicated he is a methamphetamine user, I was suspicious that Michael had possibly hidden narcotics in the vehicle. At that time, I advised Brent he was not free to leave based on my reasonable suspicion, and I advised him of his Miranda Warnings. Brent stated he understood and waived his rights.

I attempted to request a narcotics K-9 handler to respond to the scene, but there were none available in Yakima County. I then attempted to speak to Brent and Michael about granting consent for their property and items in the vehicle. Brent stated there was nothing illegal in the car, but he did not want me to search the car. I asked Michael if I could search his sweatshirt, and he immediately denied that I could. I told him at that time he was free to leave, and he walked away, leaving his sweatshirt in the car without requesting to take it with him.

I continued to attempt to contact Officer James so he could respond with his K-9 Partner Daisy with no luck. I then contacted The honorable Judge Engel and applied for a search warrant for the vehicle based on Benjamin's statements that Michael was in the neighborhood to purchase drugs, Michael's previous admission that he is a methamphetamine user, my observation of him in the area Benjamin said he was purchasing drugs in, within a short time of those statements, his presence with Brent Reedy in a vehicle I knew to be at his residence at 2017 S 4<sup>th</sup> Avenue just a short time prior to him driving to where I was standing, and the fact that I heard the vehicle start, leave the house and drive directly to where I was, (negating a defense that he came from somewhere else), and the

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furtive movements and reaching that Michael did in the area of the front passenger seat and the sweatshirt. The Honorable Judge Engel found probable cause to issue a warrant to search the vehicle.

I re-contacted Brent and advised him I was seizing his vehicle for service of the search warrant. I asked Brent if he was employed and he told me he was not. I asked Brent if he had any money on his person and he told me he did. Brent removed a handful of folded bills from his left rear pocket. I asked Brent how much money he had, and he told me he had about \$300. I asked Brent where he got the money and he told me that he recently sold his Tahoe.

I asked him if he would count the money, and he began to. He attempted to count for a few seconds, and then he told me that he could not. I asked him if Officer Thompson could count the money in front of him so we could determine how much he had. He agreed to allow us to count the money. Officer Thompson counted the money in front of Brent and found he had \$790 instead of \$300.

Brent asked me if he could take his money with him. I asked him if there were any drugs in his vehicle. He told me no. I asked him if we could make an agreement. I told Brent if there were no drugs or indicia of drug activity in his vehicle upon service of the search warrant, his money would be immediately returned to him. I told him if I located any drugs or indicia of drug activity in his vehicle, and anything to indicate he was involved the money would be likely seized for forfeiture. Brent stated that was ok, and I told him it was a voluntary agreement. I completed a safekeeping tag and provided it to him. Brent told me he would bring me a bill of sale for the Tahoe.

The vehicle was impounded to Elite Towing, and I served the search warrant. In the pocket of the sweatshirt, I observed what I know from training and experience to be a glass pipe of the type commonly used for smoking methamphetamine. The pipe contained suspected methamphetamine residue. On the floor at the lower left corner of the front passenger seat, I observed a small section of black plastic bag that contained a large clear, solid, golf ball sized chunk of what I recognized to be suspected methamphetamine. From my training and experience, I know that methamphetamine in this amount indicates someone who is a mid to high level dealer, and is not a quantity associated with personal use or street level sales. The suspected methamphetamine was later field tested with NIK kit A, and showed a positive color change to orange and brown indicating a presumptive positive test for amphetamines. It had a total weight of 13.89 grams, or approximately 1/2 ounce.

I have seen, seized and tested many samples of methamphetamine. This was a solid chunk with no crumbling and no small crystals or powder, indicating it was cleaved off of a larger piece, and very recently. Methamphetamine as a compound is relatively brittle, and generally crumbles with handling.

Also during the search, I located Brent's wallet that was lying on the driver's seat. He had left the scene after telling me he only had \$300, and did not mention his wallet, but I could see a large amount of currency inside. There was \$4425 in cash in the wallet, along with Brent's social security card. 24 of the \$100 bills were folded in one section of the wallet. Based on my training and experience, the bills appeared to be situated for the making of quick change.

Based on the fact that Michael was in possession of a dealer level amount of methamphetamine after being reported to be in the area to purchase methamphetamine, and he was located with Brent Reedy, who is unemployed and was in possession of \$5215, and also has a history of arrests with DEA and Cass County Sheriff's Office in Minnesota for Possession and Distribution of Methamphetamine, as well as the fact that I observed the red Camaro they were located in several times during the night, and it had not left the residence until I heard it start and drive to our location. Based on the fact that Benjamin said Michael went around the corner to purchase methamphetamine, and returned a short time later with someone suspected of dealing methamphetamine who was in possession of \$5215 of undocumented, unexplained cash, it is reasonable to believe the methamphetamine was purchased from Brent at his residence.

WHEREFORE, your affiant prays that a Search Warrant be issued directly to the Union Gap Police Department, Union Gap, Washington, or to any peace officer in Yakima County duly authorized to enforce or assist in enforcing any law herein, commanding him to search the above-described residence, outbuildings and vehicles and all property, situated in said residence, outbuildings and vehicles and to seize all evidence as more particularly described in the attached search warrant which is incorporated by law, and make return of said warrant within three (3) days, showing all acts and things done hereunder, with a particular statement of all articles seized and names of

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DECLARATION OF SERVICE

I, David B. Trefry state that on December 14, 2015 emailed a copy, by agreement of the parties, of the Respondent's Brief , to Ms. Kristina Nichols, at [Wa.Appeals@gmail.com](mailto:Wa.Appeals@gmail.com)

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 14<sup>th</sup> day of December, 2015 at Spokane, Washington.

By: s/David B. Trefry  
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