

No. 33217-9-III
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

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Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Respondent

v.

William J. Wright,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
COUNTY OF PEND OREILLE

The Honorable Judge Allen Nielson

RESPONDENT'S OPENING BRIEF

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I. STATEMENT OF THE CASE

In the early morning hours on October 20, 2013, Pend Oreille County Sheriff deputies served a warrant to search four contiguous properties owned by the Appellant, William J. Wright. RP 161, 555, 557, CP 140-50. The warrant authorized deputies to search for “illegal drugs, paraphernalia”, packaging and manufacturing materials including, but not limited to “scales, baggies,...US currency,” stolen vehicles and firearms. CP 149. It further authorized the deputies to search for “[a]ll other things by means of which the crimes of manufacturing, delivering, or possessing a controlled substance” has or have been committed, or reasonably appears to have been committed. *Id.* The warrant specifically included a search for a .45 caliber revolver, a 7 mm rifle, a .30-06 rifle and a white, mid 1990’s Dodge Ram pickup. *Id.* The warrant authorized deputies to search Mr. Wright’s shop which included his residence on the upper floor and a travel trailer located approximately 75-100 west of Mr. Wright’s shop. CP 147-48. Monty D. Radan and Ellen J. Daily were staying in the travel trailer located on Wright’s property. RP 236, 239, 311, 320, 322-23, CP 145.

The affidavit in support of the search warrant was drafted by Pend Oreille County Deputy Jordan Bowman. RP 551, CP 140-150. The information Deputy Bowman used to support the warrant was obtained from an informant, Charles Adam Castro. RP 551, CP 140-150. Mr. Castro met

with Deputy Bowman on October 17, 2013, the same day Castro was arrested for unlawful possession of a firearm, attempting to elude, and possession of a controlled substance, methamphetamine. RP 159-60, 349-62, 546-47, 551, 554-56. Castro told deputies during his arrest on that date that he had information about methamphetamine coming into the Newport, Washington area. RP 161, 350-51, 547. Deputies made no promises to Castro for providing the information other than there was some indication that Deputy Bowman would “put in a word” or tell the prosecutor that Castro spoke with him. RP 160, 351, 547; CP 312-FF D, CP 313-FF F.

Deputy Bowman’s meeting with Castro occurred in the Pend Oreille County Sheriff’s office interview room. RP 547, CP 311. The interview room has an audio-video recording system that is continuously running and automatically records all interviews or conversations that take place in the room. RP 548, CP 311. However, the recording system in the room “doesn’t always work.” RP 230. If the system is working properly, recordings are preserved for 45 days after which they are “automatically overridden.” CP 311, FF A. A copy of an interview or conversation can be preserved if requested within the 45 day period. *Id.* Deputy Bowman did not request that a copy of Castro’s interview be preserved because he did not think he needed one. RP 549; CP 312, FF B. No copy of Bowman’s meeting with Castro was saved or preserved. RP 549.

As mentioned above, most of the information for the warrant's affidavit was garnered through Deputy Bowman's October 17, 2013 meeting with Castro. RP 551, CP 140-150. In this meeting, and contained in the affidavit, Castro reported that he suffered from a "long addiction" to methamphetamine. CP 144. The affidavit also reflected that Castro reported that he had purchased methamphetamine from Wright for several years and "at least 6-7 times...in the last 30 days." RP 353, CP 144, 312-FF C. The affidavit also included Castro's statement that he did not like to purchase methamphetamine from Wright because Wright is a "predator." CP 144. He also reported that he could purchase methamphetamine from Wright at any given time because Wright regularly possessed a quarter to a full pound of methamphetamine. *Id.*

The affidavit also included details of Castro's most recent drug purchase from Wright which occurred approximately five days prior to the warrant's authorization. CP 143-144, 312 FF C. In that transaction, Castro reported that he pooled his money with another individual to purchase a half ounce of methamphetamine. CP 143, 312-FF D. Castro said he smoked the meth with Wright and the other individual in Wright's shop. *Id.* Castro also detailed how the buy transpired, including how he and the other individual had to wait downstairs in Wright's shop while Wright went upstairs to into his residence to retrieve the drugs. *Id.* He described how Wright took the

drugs from a gallon-sized, zip-lock bag that contained a partially broken up “grapefruit”-sized rock of methamphetamine. CP 144. Castro reported that in the past he purchased and smoked methamphetamine with Wright in the travel trailer located on Wright’s property where Radan and Dailey were staying. CP 145. Castro also stated that he purchased and smoked methamphetamine with Wright near a concrete slab located on a remote section of Wright’s property—a location Castro believed Wright might be secreting money from his drug sales. *Id.*

Castro described the details of Wright’s property. CP 145. He described that there was a small residence on the upper floor of Wright’s shop. CP 144. Inside this residence, there was a black recliner with a cabinet behind it. *Id.* Castro also described that there was a travel trailer approximately 75-100 west of Wright’s shop. CP 145. A “junkyard” with numerous automobiles was located about 400-500 yards from Wright’s shop. *Id.*

The affidavit also included Castro’s observations of firearms on Wright’s property. CP 144. Wright is a convicted felon and is prohibited from possessing firearms. CP 146. Castro personally observed at least three different firearms in Wright’s residence and reported discharging firearms with Wright on Wright’s property in the past. CP 144-45. Castro also identified a location on Wright’s property where a stolen Dodge pickup was

possibly located. CP 145. Castro's knowledge of this stolen truck was based upon a conversation he overheard between Wright and a known car thief regarding the replacement of the ignition in the vehicle. CP 145-46. Deputy Bowman corroborated Castro's statement with his own knowledge that the car thief had been arrested on Wright's property a few months earlier and that the thief had a history of stealing Dodge pickups. CP 146. Deputy Bowman was also aware that in 2009 and 2010 Wright's residence had been the subject of search warrants for methamphetamine and stolen property. *Id.*

The affidavit also outlined the criminal history of both Wright and Castro. CP 146. Wright's criminal history included two felony convictions for possession of a controlled substance, both from 2011. *Id.* The affidavit listed six felony convictions for Castro: Two counts of possession of a stolen vehicle, two counts of possession of a controlled substance and an attempt to elude, all from 2012 and a separate conviction for possession of a stolen vehicle in 2011. *Id.*

Some information Castro provided during the interview was not included in Deputy Bowman's affidavit. The affidavit did not include Castro's statements that Wright was a "pedophile, that he had sexually assaulted a woman; and that he had given women drug cocktails." CP 312-

FF D. The affidavit also did not include specific facts evincing Castro's dislike or hatred for Wright. *Id.*

The affidavit and warrant were reviewed and signed by Pend Oreille County Superior Court Commissioner Phillip J. Van de Veer on October 19, 2013. CP 140-50. Deputies served the warrant on October 20, 2013. RP 161, 555, 557.

When deputies knocked and announced their presence, a male's voice on the other side of the door said "Just a minute." RP 165, 242, 263, 558. The deputies could hear movement in the upstairs portion of the shop that sounded like people running. RP 242, 558. After waiting nearly two minutes for someone to open the shop door, deputies pried the door open. RP 263, 306-307. Once inside, deputies found Wright and two females in the shop. RP 166, 307, 559.

During the search of Wright's residence above his shop, deputies found 1.6 grams of methamphetamine, two small digital scales with methamphetamine residue, 75 hydrocodone pills in separate unlabeled bottles, \$230 in cash and "hundreds" of small, unused resealable 1" x 1" bindle baggies with designs on them. RP 173, 175-79, 180-81, 259, 565, 569, 570, 576-77. Many of the bindle baggies had a "red smiley face" on them. RP 179. Bindle baggies are often used in the sale and distribution of illegal drugs, including methamphetamine. RP 169.

Deputies also searched the travel trailer in which Monty Radan and Ellen Daily were staying. RP 308. Radan and Dailey both gave consent for deputies to search the trailer. RP 323-24. In the trailer deputies found a drug kit, drug paraphernalia and two firearms. RP 308-12. The drug kit found inside the trailer contained a single bindle baggy with a “red smiley face” on it just like those found in Wright’s residence. *Id.* The firearms found in the trailer were determined to belong to Radan. RP 309, 311, 323-24. Radan indicated that one of the firearms was a birthday gift from Wright. RP 323. Elsewhere on Wright’s property, deputies found three stolen vehicles and a stolen ATV. RP 205, 315, 578-580.

On March 17, 2014, Wright’s attorney interviewed Castro. CP 313-FF F. The purpose of the interview was to question Castro about the information he gave Deputy Bowman about Wright which led to formation of search warrant. *Id.* Wright’s attorney was able to elicit more information from Castro about Wright than Deputy Bowman was able to secure from Castro in his interview of Castro. *Id.*

II. PROCEDURAL BACKGROUND

The State charged Wright with one count of possession with intent to deliver a controlled substance, methamphetamine; one count of possession of intent to deliver a controlled substance, hydrocodone; and four counts of possession of a stolen vehicle. CP 1-7.

Prior to trial, Wright requested a *Franks v. Delaware*¹ (*Franks*) hearing alleging that Deputy Bowman intentionally omitted information regarding Castro's animosity or hatred toward Wright in the warrant affidavit. CP 50-120. The trial court denied the request for a hearing because Wright failed to make the required "substantial preliminary showing" that Deputy Bowman's failure to include evidence of Castro's animosity toward Wright was a material omission that was intended to mislead or deceive the judge that signed the warrant. RP 56-57; CP 192, CL 21-24. The trial court found that the omission was not material because it would be reasonable for the judge to assume there was some sort of "beef" between Wright and Castro or that Castro had a self-serving, ulterior motive for sharing unfavorable information about Wright with law enforcement. CP 192, CL 22-23.

Wright also moved to suppress evidence obtained from the search warrant based upon a lack of probable cause because Castro's information failed to conform to the *Aguilar/Spinelli*² test. RP 81-89, CP 50-120. The trial court denied the motion finding that Castro's information satisfied both the "basis of knowledge" and "veracity" prongs of the *Aguilar/Spinelli* test. CP 190-91, CL 9-18. The court found the "knowledge" prong was satisfied

¹ 438 U.S. 154, 57 L. Ed 2d 667, 98 S. Ct. 2674 (1978)

² *Aguilar v. Texas*, 378 U.S. 108, 114, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964); *Spinelli v. United States*, 393 U.S. 410, 413, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969)

by: 1) Castro's personal observations of methamphetamine being sold and possessed by Wright; 2) Castro's own purchase of methamphetamine from Wright in the recent past and over the last few years; 3) Castro's shooting of firearms with Wright; 4) Castro's observation of firearms in Wright's residence; 5) Castro's overhearing a conversation between Wright and a known car thief regarding a stolen 1990's Dodge pickup truck; and 6) Castro's observation of "abandoned" vehicles on Wright's property. CP 190, CL 9-11. The trial court found the "veracity" prong was satisfied by: 1) Castro's numerous statements against his penal interests including his use, purchase and possession of illegal drugs; 2) Castro's admission of possessing and discharging a firearm as a felon; 3) Castro's willingness to allow himself to be fully identified and foregoing a confidential status; 4) Castro's detailed knowledge of the layout of Wright's property; and 5) corroboration of Castro's information by law enforcement, i.e.: knowledge that a known car thief was arrested on Wright's property 5-6 months earlier and that Wright's property had previously been searched for drugs and stolen property. CP 191, CL 13-17.

Wright also moved to dismiss the charges against him based upon an alleged due process violation that occurred when Deputy Bowman did not retain or secure a copy of the audio/video recorded interview with Castro. CP 210-254. In deciding this motion, the trial court heard testimony

from Deputy Bowman, and reviewed the transcript of the interview Wright's counsel took of Castro on March 17, 2014, and the affidavit in support of the search warrant. CP 310. The court found that even though the interview recording contained statements from Castro that demonstrated that Castro "was angry at Mr. Wright" and that Wright "was a meth dealing predator," these statements were not exculpatory. CP 314, CL A. The court also found that Wright's counsel's interview of Castro supplied Wright with comparable evidence which contained "considerably more detail than the recorded interview with Deputy Bowman" would have provided. CP 313, FF F. The court further found that even though there was considerably more detail in counsel's interview, Castro's testimony was "consistent" with what he told Deputy Bowman. *Id.*

The court also found that the audio/video recording was not "potentially useful" and that Deputy Bowman did not act in bad faith by not requesting a copy of recording. CP 311, FF B. The court also found that Deputy Bowman was not trying to cover up or hide any statements made by Castro by not requesting a recorded copy of the interview. *Id.* The trial court denied Wright's motion to dismiss finding that there was not a due process violation because the recording was not exculpatory, was not potentially useful and that comparable evidence was available to Wright by

means of his counsel's interview of Castro on March 17, 2014. CP 313-14, CL A-B.

Wright's matter went to trial on January 20, 2015. RP 113. During trial, testimony was elicited from Deputy Dan Dice that firearms were found inside the trailer where Radan and Dailey were staying. RP 308-09. Wright raised no objection to this evidence or testimony. RP 309. Testimony was also elicited that a single, used "red smiley face" bindle baggy like those found in Wright's residence was located in the drug kit found inside the trailer. RP 309-311. Wright objected on relevance grounds to the "red smiley face" bindle baggy being admitted. RP 312. The trial court overruled the objection finding that the evidence was relevant to the State's theory of its case to the charged count of possession with intent to deliver a controlled substance. CP 312-13.

Testimony at trial also established that the State had given Castro "a deal to testify" against Wright. RP 346. The terms of the "deal" included the resolution of new charges filed against Castro and some of his probationary matters. RP 346-51.

At the conclusion of the State's case in chief, Wright made a motion to dismiss all charges against him. RP 698-707. The trial court granted the motion as to count II, possession of intent to deliver a controlled substance, hydrocodone, but found that sufficient evidence had been presented for the

remaining charges. RP 711-16. Wright rested his case after the court granted the motion without presenting any testimony or evidence in his behalf. RP 725. The parties then moved to closing arguments. RP 755-803.

In his initial closing argument, the prosecutor stated he wanted to “talk a little bit about Mr. Castro.” RP 766. Before the prosecutor could go any further, Wright’s counsel objected on the basis that the prosecutor was “vouching for the case.” RP 767. The trial court did not rule on the objection but indicated that it would “bear that in mind” as the prosecutor had not yet commenced his argument. *Id.* The prosecutor then outlined Castro’s extensive history to the jury. RP 767-68. Wright’s counsel did not renew or raise a new objection in response to the prosecutor’s statements made during this part of his initial closing. RP 768.

In Wright’s closing, his counsel argued that the “prosecutor will make a bargain with the devil” in describing and assessing the State’s “deal” with Castro. RP 781. The prosecutor responded to counsel’s argument in his final closing by arguing that Castro’s criminal history had been considered in making and entering the “deal” with him. RP 801. Wright’s counsel objected citing “vouching.” *Id.* The court overruled the objection. RP 802. The prosecutor continued his argument by pointing out more evidence of Castro’s criminal history that was considered prior to making the “deal” with Castro. *Id.* Wright’s counsel again objected as “vouching.”

Id. The court then pointed out it had ruled on the matter, overruled the objection and allowed the prosecutor to proceed. *Id.* The prosecutor concluded by arguing that “the deal” made with Castro to testify against Wright “was worth it.” *Id.* Counsel objected again citing “vouching” and the court ordered the jury to disregard the prosecutor’s comment. *Id.* The prosecutor completed his closing rebuttal statements shortly thereafter and the jury was excused to begin their deliberations. RP 803.

After the jury left the courtroom, Wright moved for a mistrial alleging prosecutorial misconduct based upon the prosecutor “vouching” for the “deal” and efforts to “vouch for the case.” RP 805-06. The trial court denied the motion as it related to Wright’s first two objections holding that outlining the witnesses criminal history did not amount to “vouching.” RP 811. It found that the defense’s “deal with the devil” argument was a common theme in informant cases and that the State’s response in pointing out evidence that supported the deal was expected and appropriate. *Id.* With regard to the prosecutor’s statement “the deal was worth it,” the court found it to be “ambiguous” but held that it was not a comment upon Castro’s believability and did not vouch for Castro’s credibility. *Id.* Still, the court believed it was appropriate to order the jury to disregard the statement. RP 812. Wright did not request a limiting or curative instruction. *Id.*

The jury found Wright guilty on the one count of possession with intent to deliver a controlled substance-methamphetamine and four counts of possession of a stolen vehicle. RP 814-15. The trial court polled the jury as requested by Wright, and the verdict was unanimous. RP 815. The trial court sentenced Wright to serve 120 months and 12 months of community custody on the charges. RP 843. This appeal follows.

III. STATEMENT OF THE ISSUES

- A. Whether the trial court correctly exercised the court's discretion in denying Wright's motion for a *Franks* hearing because Wright failed to make the required "substantial preliminary" showing of a material omission of fact.
- B. Whether the trial court correctly found that the information provided by the informant satisfied the requirements of the *Aguilar/Spinelli* test and supported the finding of probable cause for issuance of the search warrant.
- C. Whether the trial court correctly admitted relevant evidence found in the trailer on Wright's property that supported the State's contention that Wright possessed a controlled substance with the intent to deliver it.
- D. Whether trial court correctly exercised the court's discretion by denying Wright's motion to dismiss when it found that Wright's due process rights were not violated when law enforcement failed to retain a copy of the audio/video recording of their interview with an informant because the recording was not exculpatory, was not potentially useful and comparable evidence was available to Wright.
- E. Whether the trial court correctly found that the prosecutor did not engage in misconduct in his closing argument by outlining the informant's criminal history to show that the informant would be the type of person who would purchase illegal drugs from Wright.

IV. ARGUMENT

- A. The trial court correctly denied Wright's motion for a *Franks* hearing because Wright failed to make the required "substantial preliminary" showing of a material omissions of fact in the search warrant's affidavit in order for a court to hold such a hearing.**

Wright alleges the trial court erred when it denied his request for a *Franks* hearing. Wright requested the hearing alleging that Deputy Bowman purposefully failed to include information regarding Castro's contempt and hatred for him in his search warrant affidavit. Appellant's Brief at 9, RP 37-58. The trial court noted that it was presumed that the informant did not like Wright regardless of whether that was mentioned in the affidavit and properly exercised the court's discretion by denying Wright's request for a *Franks* hearing.

The denial of a *Franks* hearing is reviewed for an abuse of discretion. *State v. Wolken*, 103 Wn.2d 823, 829-30, 700 P.2d 319 (1985). A trial court's finding on whether an affiant deliberately excluded material facts is a factual determination and will be upheld unless clearly erroneous. *State v. Clark*, 143 Wn.2d 731, 752, 24 P.3d 1006 (2001). A factual determination is not clearly erroneous if supported by substantial evidence. *State v. Atchley*, 142 Wn. App. 147, 154, 173 P.3d 323 (2007). Substantial evidence exists if there is sufficient evidence in the record such that a fair-minded person would be persuaded of the truth of the finding. *Id.*

A *Franks* hearing allows a defendant to challenge portions of a search warrant he or she alleges contain material falsehoods or material omissions of fact and potentially overturn the warrant in order to suppress evidence found pursuant to the warrant. *Franks v. Delaware*, 438 U.S. 154, 57 L.Ed. 2d 667, 98 S. Ct. 2674 (1978); *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985). An evidentiary *Franks* hearing is only granted after a defendant makes a “substantial preliminary” showing of material omissions or false statements in the warrant that are intentional or culpable and that are designed or intended to mislead a magistrate. *Id.*

An affiant to a search warrant cannot be expected to include every piece of information gathered in the course of an investigation in an affidavit, and the fact that an affiant did not include every conceivable conclusion in the warrant does not taint the validity of the affidavit. *United States v. Colkley*, 899 F.2d 297, 300-01 (4th Cir. 1990), quoting *United States v. Burnes*, 816 F.2d 1354, 1358 (9th Cir. 1987); *State v. Bockman*, 37 Wn. App. 474, 486, 682 P.2d 925 (1984), review denied, 102 Wn.2d 1002 (1985). However, omissions in a warrant affidavit may invalidate a warrant if the defendant establishes that the omissions are material or are omitted with a reckless disregard for the truth. *Franks*, 438 U.S. at 155-56; *State v. Seagull*, 95 Wn.2d 898, 908, 632 P.2d 44 (1981). An omission is material if it was necessary to the finding of probable cause. *State v. Copeland*, 130

Wn.2d 244, 277, 922 P.2d 1304 (1996). Omitted information that is potentially relevant but not dispositive is not enough to warrant a *Franks* hearing. *Id.* at 874. Furthermore, the omission of a material fact does not support a finding of reckless disregard of the truth. *State v. Garrison*, 118 Wn.2d 870, 873, 827 P.2d 1388 (1992).

Negligent omissions or innocent mistake are also insufficient to support a *Franks* hearing. *Garrison*, 118 Wn.2d at 872 (quoting *Franks*, 438 U.S. at 171). A negligent omission occurs when the affiant genuinely believes that the omitted statement was irrelevant, and this belief was reasonable, even if it was incorrect. *State v. O'Connor*, 39 Wn. App. 113, 118, 692 P.2d 208 (1984), *review denied*, 103 Wn.2d 1022 (1985). “Scrutinizing a warrant affidavit for evidence of negligent omissions or misstatements is also inconsistent with our State’s established jurisprudence governing search warrant challenges.” *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007).

The defendant has the burden of proving by a preponderance of the evidence that there was an intentional misrepresentation or a reckless disregard for the truth by the affiant. *State v. Hashman*, 46 Wn. App. 211, 729 P.2d 651(1986), *review denied*, 108 Wn.2d 1021 (1987). A defendant who merely presents the content of the omitted facts as an offer of proof for the affiant’s misconduct is an insufficient basis upon which to grant a

Franks hearing. *Garrison*, 118 Wn.2d at 872-73. Even if a defendant is able to prove an intentional or reckless misstatement or omission, the defendant must still show that probable cause to issue the warrant would not have been found had the omissions been included or the false statements deleted. *State v. Gentry*, 125 Wn.2d 570, 607, 888 P.2d 1105, *cert. denied*, 516 U.S. 843 (1995). A suppression motion fails and no *Franks* hearing is required if there is sufficient evidence to support a finding of probable cause with the omitted matters inserted into the affidavit. *Id.*

Probable cause for a search warrant is established if the affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability that the defendant is involved in criminal activity. *Seagull*, 95 Wn.2d at 906-07. Generally, a search warrant is entitled to a presumption of validity, and courts will give "great deference to the magistrate's determination of probable cause" and resolve any doubts in favor of the warrant. *Chenoweth*, 160 Wn.2d at 477.

The facts in this case are similar to those in *State v. Chenoweth*, 160 Wn.2d 454. There, two co-defendants moved to suppress evidence secured by a search warrant that tended to show they manufactured methamphetamine arguing that the affiants to the warrant recklessly and/or intentionally omitted facts about the informant's background and motivation that would have affected the magistrate's determination of

probable cause. *Chenoweth*, 160 Wn.2d 458. The alleged omitted facts included: (1) the informant was motivated by revenge in that he was angry with one of the defendants for failing to return his car; (2) the informant was motivated by self-interest in that he expected the police to help him retrieve his car; (3) the informant provided the information in the expectation that the police would pay him; (4) the informant's criminal history that included several crimes of dishonesty; (5) the informant had been a paid informant but his contract was terminated because of concerns about his reliability; (6) the informant had been charged with intimidating a witness; (7) two years earlier, the informant made unsubstantiated allegations that his attorney accepted cocaine as payment for his defense. *Chenoweth*, 160 Wn.2d at 460-61. Although not the subject of a denial of a *Franks* hearing, the Supreme Court upheld the validity of the search warrant despite the exclusion of the above listed facts. *Chenoweth*, 160 Wn.2d at 479-81. The Court found that there was insufficient evidence of recklessness and intentionality by the officer in failing to include these facts into the warrant's affidavit. *Id.* With regard to the informant's dispute with the co-defendants and his desire to have help in obtaining his car, the Court observed that those facts provided a "plausible explanation" as to why the informant decided to contact law enforcement to report the criminal activity. *Chenoweth*, 160 Wn.2d at 483. *See also, Massachusetts v. Upton*,

466 U.S. 727, 729, 80 L. Ed. 2d 721, 104 S. Ct. 2085 (1984) (probable cause for a search warrant upheld even though informant's motive is found to be revenge).

First of all, in this case, Wright made no showing that Deputy Bowman intentionally or recklessly omitted facts from his affidavit illuminating Castro's animosity or hatred for Wright. RP 37-58. Wright also could not show that the omitted statement was material. The trial court noted that the informant's dislike of Wright was assumed in the content of the affidavit, therefore adding a specific statement to that effect would not be material.

Second, Deputy Bowman's affidavit does contain a statement that Castro did not like to purchase methamphetamine from Wright because he thought Wright was a "predator." CP 144. To mention this dislike under those circumstances and to call Wright a "predator" shows that Castro did not have a favorable opinion of Wright and likely harbored ill feelings toward him. Therefore, Wright's contention that there was no evidence before the signing judge of Castro's dislike for him is inaccurate.

Third, the affidavit sets forth sufficient facts for a judge to conclude there is a probability that the defendant is involved in criminal activity even without the statement about any animosity toward Wright. *See State v. Copeland*, 130 Wn.2d at 277. Deputy Bowman's decision not to include

the statement was not reckless because it is reasonable that an informant would likely have some animus or ill feelings toward a party he or she identified to law enforcement as having engaged in criminal conduct. *See Chenoweth*, 160 Wn.2d at 483 (search warrant upheld where informant was motivated by self-interest and revenge). The trial court did not abuse its discretion in denying Wright's motion for a *Franks* hearing, and in fact, the trial court noted the addition of that information was immaterial and was presumed. Wright has failed to make a substantial preliminary showing that Deputy Bowman intentionally omitted material information or acted with a reckless disregard for the truth. Wright's argument also fails because even if the facts regarding Castro's animosity toward Wright were included in the affidavit, it is obvious that there is still sufficient evidence to support probable cause to issue the search warrant either with or without that information.³ Therefore, even if facts regarding Castro's hatred toward Wright were included in the warrant affidavit, there was sufficient evidence

³ The evidence included (1) Castro's observation of Wright's use and sale of methamphetamines on his property five days prior to the warrant's authorization; (2) Castro's statement that he purchased methamphetamine from Wright for an extended period of time including purchasing over \$1,200 worth of methamphetamine in the thirty days prior to the warrant's authorization; (3) Castro's observation of multiple firearms on the premises and Wright discharging some of the firearms with Wright who was a convicted felon and prohibited from possessing a firearm; and (4) Castro personally overhearing Wright in a conversation discussing the replacement of an ignition in a stolen vehicle on Wright's property. CP 143-46.

to find probable cause to issue the warrant. The trial court properly exercised its discretion to deny Wright's request for a *Franks* hearing.

B. Whether the trial court correctly found that information provided by an informant that formed the basis of the search warrant's affidavit satisfied the requirements of the *Aguilar/Spinelli* test and supported the finding of probable cause to issue a warrant.

Wright alleges that the information supplied by Castro in support of the search warrant failed to meet the *Aguilar-Spinelli* test. Wright's argument is without merit because there is abundant evidence to show that the *Aguilar/Spinelli* test was satisfied by both Castro's basis of knowledge for his information and his credibility to rely on the information he provided.

A search warrant must be supported by a finding of probable cause. *State v. Atchley*, 142 Wn. App. 147, 161, 173 P.3d 323 (2007). It is clearly established that probable cause for a search warrant may be based on information provided by an informant. *State v. Gaddy*, 152 Wn.2d 64, 71, 93 P.3d 872 (2004). Probable cause for a search warrant exists where there are sufficient facts and circumstances to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched. *Atchley*, 142 Wn. App. at 161.

A judge's determination of probable cause is reviewed for abuse of discretion. *Id.* In reviewing this decision, the trial court's ruling is accorded great deference by the reviewing court, and doubts are to be resolved in favor of the warrant's validity. *Atchley*, 142 Wn. App. at 161; *Chenoweth*, 160 Wn.2d at 477.

When a search warrant is based on an informant's tip, Washington utilizes the *Aguilar-Spinelli* test to assess an informant's "basis of knowledge" and "veracity" to evaluate the existence of probable cause. *Atchley*, 142 Wn. App. at 161; *see also State v. Jackson*, 102 Wn.2d 432, 443, 688 P.2d 136 (1984). The prongs are independent and both must be established in the warrant's affidavit. *Jackson*, 102 Wn.2d at 437. Under the test, an informant's tip is sufficient to create probable cause for the issuance of a search warrant when an affidavit (1) sets forth some of the underlying circumstances from which the informant drew his conclusions so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information, and (2) sets forth some of the underlying circumstances from which the officer resolved that the informant was credible and his information reliable. *Wolken*, 103 Wn.2d at 827 (*citing Aguilar v. Texas*, 378 U.S. 108, 114, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964); *Spinelli v. United States*, 393 U.S. 410, 413, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969); *Jackson*, 102 Wn.2d at 435).

1. Castro's personal observations properly establish the "basis of knowledge" prong of the *Aguilar/Spinelli* test.

There is sufficient evidence in the Deputy Bowman's affidavit to satisfy the "basis of knowledge" prong of the *Aguilar/Spinelli* test. An informant's personal observations are sufficient to satisfy the "basis of knowledge" prong of the *Aguilar/Spinelli* test. *Wolken*, 103 Wn.2d at 827. Washington courts have held that if an informant reports hearsay to an affiant, the knowledge prong may still be satisfied when there is sufficient information so that the hearsay shows a basis of knowledge. *Jackson*, 102 Wn.2d at 437-38.

Here, Castro reported personally observing Wright use and sell methamphetamine on his property five days prior to the court's authorization of the search warrant. CP 143. He described in detail how and where on Wright's property the purchase transpired. *Id.* Castro advised that he had purchased methamphetamine from Wright six or seven times over the last 30 days. CP 144. He also described how drugs and paraphernalia were present every time he was at Wright's residence. *Id.* Castro described how he had smoked methamphetamine in a trailer on Wright's property that was separate and apart from Wright's residence. CP 145. Castro indicated that he personally observed firearms within Wright's residence. CP 144. He reported that he and Wright discharged firearms on

the property where numerous abandoned cars were located. CP 144-45. Lastly, Castro advised that he overheard a conversation between Wright and a known car thief about replacing the ignition on a stolen Dodge pickup truck located on Wright's property. CP 146. Law enforcement, in fact, arrested the identified car thief on Wright's property a few months prior to the warrant's authorization. *Id.* These facts described and reported by Castro were very detailed, consistent with other information known by law enforcement, and are more than sufficient to satisfy the knowledge prong of the *Aguilar/Spinelli* test.

2. Deputy Bowman's affidavit establishes the "veracity" prong of the *Aguilar/Spinelli* test.

Deputy Bowman's affidavit in support of his request for a search warrant also demonstrates that the information Castro provided was reliable and credible. The test to establish veracity varies depending on the informant's status. *State v. Ibarra*, 61 Wn. App. 695, 699, 812 P.2d 114 (1991). Informants can be divided into a number of different categories: (1) an informant who remains completely anonymous, even to the police, (2) an informant whose identity is known to the police, but not revealed to the magistrate, (3) an informant whose identity is disclosed to the magistrate, or (4) an eyewitness to a crime who summons the police and who is not identified because the exigencies are such that ascertaining the identity and

background of the witness would be unreasonable.” *Id.* (citing *State v. Northness*, 20 Wn. App. 551, 555, 582 P.2d 546 (1978)). Informants, however, do not always fit neatly into one of the categories delineated above. *See Chenoweth*, 160 Wn.2d at 482.

When the identity of an informant is known and disclosed to the magistrate, the necessary showing of reliability is relaxed. *State v. Gaddy*, 152 Wn.2d 64, 73-74, 93 P.3d 872 (2004). This is so “because there is less risk of the information being a rumor or irresponsible conjecture which may accompany anonymous informants” and “an identified informant's report is less likely to be marred by self-interest.” *State v. Ollivier*, 178 Wn.2d 813, 850, 312 P.3d 1 (2013). Additionally, “an informant's willingness to come forward and identify himself is a strong indicator of reliability.” *Chenoweth*, 160 Wn.2d at 483. By coming forward, there is the opportunity to hold the informant accountable for any false assertions. *Id.* The ability to hold the informant responsible increases the likelihood the informant would report only truthful information thereby increasing the informant's veracity. *Id.*

Another factor considered in assessing the veracity of an informant is when an informant offers statements against his or her penal interest. *See State v. Chamberlin*, 161 Wn.2d 30, 42, 162 P.3d 389 (2007). Such statements are considered to be inherently reliable because a person is

unlikely to make a self-incriminating admission unless it is true. *State v. Lair*, 95 Wn.2d 706, 711, 630 P.2d 427 (1981).

The veracity prong can also be established by showing that the informant had a strong motive to be truthful. *See State v. Bean*, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978) (an offer of a favorable sentence recommendation give an informant a strong motive to provide accurate information); *State v. Estorga*, 60 Wn. App. 298, 304-05, 803 P.2d 813 (1991) (offer to drop charges in exchange for accurate information established strong motive to be truthful); *State v. Smith*, 39 Wn. App. 642, 647-48, 694 P.2d 660 (1984) (offer of a reduction in charge from felony to misdemeanor gave informant a strong motive to be truthful).

In this case, the affidavit identified Castro and how it came to pass that he provided information to law enforcement regarding Wright. CP 143-46. Because Castro was fully identified, there is a strong indication he is reliable and his statements are entitled to relaxed scrutiny in comparison to that of an anonymous party. *Chenoweth*, 160 Wn.2d at 483; *Gaddy*, 152 Wn.2d at 73-74. He is also made statements against his penal interest which increased the likelihood his statements were truthful. *Chamberlin*, 161 Wn.2d at 42. Castro also had an incentive to provide truthful information. Although no promises were made by law enforcement, Deputy Bowman said we would tell the prosecutor that Castro provided him with information

in support of the warrant. RP 351, 547, 644. If the information Castro provided was not truthful or did not pan out, Deputy Bowman would likely advise the prosecutor of such and Castro would receive no benefit for providing the information. Lastly, there was corroboration of Castro's information regarding a stolen vehicle being on Wright's property. Deputy Bowman was aware that a known car thief had been arrested on Wright's property a few months prior and Castro identified this person as being the person Wright spoke with about replacing the ignition in a stolen vehicle. CP 146. Deputy Bowman was also aware that Wright's property had been the subject of search warrants in the past for drugs and stolen property. *Id.* There is substantial evidence to satisfy the veracity prong of the *Aguilar/Spinelli* test.

There is ample evidence in the records to show that the two prongs of the *Aguilar/Spinelli* test were satisfied. The record demonstrates Castro's basis of knowledge for the information he provided Deputy Bowman. Therefore, the trial court correctly found that there was probable cause to issue the search warrant based upon the information provided by Castro.

C. The trial court correctly admitted relevant evidence found in the trailer on Wright's property that supported the State's contention that Wright possessed a controlled substance with the intent to deliver it.

Wright argues it was error for the trial court to allow evidence of two firearms, a drug kit and drug paraphernalia found in the trailer to be introduced at trial because the evidence was not relevant. Appellant's Brief at 27. Appellate courts review a trial court's decisions regarding the admissibility of evidence under an abuse of discretion standard. *State v. Pirtle*, 127 Wn.2d 628, 648, 904 P.2d 245 (1995) (citing *State v. Lane*, 125 Wn.2d 825, 831, 889 P.2d 929 (1995)). A trial court abuses its discretion only if no reasonable person would have decided the matter as the trial court did. *State v. O'Connor*, 155 Wn.2d 335, 351, 119 P.3d 806 (2005).

Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. A party must specifically object to evidence presented at trial for a matter to be preserved for appellate review. RAP 2.5(a); *State v. Perez-Cervantes*, 141 Wn.2d 468, 482, 6 P.3d 1160 (2000).

1. Wright failed to preserve any issue regarding the relevance of the firearms for review on appeal.

Wright did not object to evidence of firearms found in the trailer from being introduced at trial. RP 309. Therefore, his argument of error by

the trial court regarding admission of this evidence is moot because the issue was not properly preserved for appellate review. See RAP 2.5(a); *Perez-Cervantes*, 141 Wn.2d at 482.

Even though he failed to properly preserve the firearm issue for appeal, Wright does not show how Radan's ownership of the guns could confuse the jury or is unduly prejudicial against him.

2. Evidence of the "red smiley face" bags is relevant.

Wright did object on relevancy grounds to evidence of the "red smiley face" bindle baggy found in the trailer being introduced at trial. RP 311-12. Wright was charged with possession of a controlled substance with intent to deliver. In order to convict a defendant for possession of a controlled substance with intent to deliver, the State must prove the following elements beyond a reasonable doubt: (1) unlawful possession of (2) a controlled substance with (3) intent to deliver. *State v. Goodman*, 150 Wn.2d 774, 782, 83 P.3d 410 (2004). Possession of a controlled substance alone is insufficient to create an inference of an intent to deliver. *State v. Darden*, 145 Wn.2d 612, 624, 41 P.3d 1189 (2002). This is the case even if the amount of the controlled substance is greater than what would be deemed consistent with personal use, or even if the substance is separated into individual baggies. *State v. Zunker*, 112 Wn. App. 130, 135, 48 P.3d 344 (2002). Therefore, the State must produce "additional evidence" that

suggests the sale of drugs by the defendant. *Zunker*, 112 Wn. App. at 136. Additional evidence that may tend to show or suggest sales activity can include large amounts of cash, scales, cell phones, address books, bindle baggies, and materials used in the manufacture of narcotics. *Zunker*, 112 Wn. App. at 136; *Goodman*, 150 Wn.2d at 783. The trial court appropriately exercised its discretion finding the smiley face bags and drug paraphernalia discovered in the trailer relevant.

As argued by the State at trial, the bindle baggy evidence was relevant to show Wright's distribution of drugs, i.e: that the bindle baggy, an item is commonly used in the distribution of drugs, which was found in the drug kit in the trailer was the same kind of bindle baggies as "hundreds" of bindle baggies found in Wright's residence. RP 169, 312. In response to this argument, the trial court correctly overruled Wright's objection finding that the evidence was relevant as it related to the charge of delivery of a controlled substance. RP 312-13. The State maintains that the bindle baggy is relevant as it is "additional evidence" beyond Wright's possession of drugs to show sales activity under *Zunker*. The trial court's ruling should also be affirmed because the evidence was relevant as it tended to substantiate the State's allegation that Wright possessed drugs with the intent to deliver them. Wright does not make any allegations demonstrating why or how the trial court abused its discretion in admitting the relevant,

though damaging, evidence of the same bindle baggies being found in a drug kit as was found in Wright's residence.

D. The trial court correctly denied Wright's motion to dismiss when it found that Wright's due process rights were not violated when law enforcement failed to retain a copy of the audio/video recording of their interview with Castro because the recording was not exculpatory, was not potentially useful and comparable evidence was available to Wright.

Wright moved to have the charges against him dismissed by claiming a due process violation occurred when Deputy Bowman failed to secure and retain a copy of the audio/video recording of his interview with Castro. Appellant's Brief at 24-25. An alleged due process violation is reviewed de novo. *State v. Eckblad*, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004).

Depending on the nature of the evidence and the motivation of law enforcement, the destruction of evidence can constitute a due process violation. *State v. Groth*, 163 Wn. App. 548, 557, 261 P.3d 183 (2011). If the State or law enforcement fails to preserve "material exculpatory evidence," criminal charges must be dismissed. *State v. Wittenbarger*, 124 Wn.2d 467, 475, 880 P.2d 517 (1994). For evidence to be considered "material exculpatory evidence," the evidence must possess an exculpatory value that was apparent before it was destroyed and be of such a nature that

it leaves the defendant with an inability to obtain comparable evidence by other reasonable means. *Id.* at 475.

Evidence that is not “material exculpatory evidence” can be “potentially useful” evidence. *Id.* at 477. “Potentially useful” evidence is evidence that “could have been subjected to tests, the results of which might have exonerated the defendant.” *Groth*, 163 Wn. App. at 557 (*quoting Arizona v. Youngblood*, 488 U.S. 51, 57, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988)). The State's failure to preserve evidence that is merely “potentially useful” does not violate due process unless the defendant can demonstrate that the State acted in bad faith in failing to preserve the evidence. *State v. Burden*, 104 Wn. App. 507, 512, 17 P.3d 1211 (2001). Bad faith can be established by the State's failure to preserve evidence that it “knows has exculpatory value at the time it was lost or destroyed or that the destruction was improperly motivated.” *Id.* at 558-59.

The evidence here is an audio/video recording of Castro reporting to law enforcement his knowledge of Wright’s criminal activity and his description of Wright as being a “pedophile, and a person who “sexually assaulted a woman” and dispensed drug cocktails to women. RP 352-58, 550-51; CP 140-50; 312-FF D. This evidence has no indicia of being exculpatory. The evidence is not “material exculpatory evidence” because comparable evidence was reasonably available to Wright in the form of an

interview of Castro. In fact, the trial court found that the information secured by his counsel's interview of Castro provided Wright with "considerably more detail than the recorded interview with Deputy Bowman." CP 313, FF F.

The recorded interview was also not "potentially useful" evidence since there was no ability to test the evidence or exonerate Wright. See *Groth*, 163 Wn. App. at 557. In addition, Wright produced no evidence that Deputy Bowman acted in bad faith in not securing or requesting a copy of the recording. CP 310-315.

Based upon all of this, it is clear that the trial court properly found that the recording was not exculpatory and Deputy Bowman's failure to secure or retain a copy of it was not a due process violation. Therefore, the trial court correctly denied Wright's motion to dismiss for a due process violation.

E. The trial court correctly found that the prosecutor did not engage in misconduct in his closing argument when he argued that the State's "deal" with Castro was beneficial to the State's case and when he outlined Castro's criminal history to show that Castro would be the type of person who would purchase illegal drugs from Wright.

Wright asserts the deputy prosecutor committed misconduct in his closing argument after he "made repeated comments about his own view of the case" and was "vouching" for the State's case. Appellant's Brief at 30;

RP 766-69; 800-802. The first statements alleged as misconduct is a recitation of Castro's substantial criminal conviction history. RP 766-769. The second statement claimed as misconduct is the prosecutor's statement that the State made a deal with Castro to testify against Wright and "the deal was worth it"; a statement referencing the benefit resulting from the deal the State made with Castro to secure his testimony against Wright. RP 800-802. Wright's claim is without merit because the statements made by the prosecutor during closing do not rise to the level of misconduct.

Closing argument is an opportunity to direct the jury's attention to the evidence presented. *State v. Walker*, 182 Wn.2d 463, 478, 341 P.3d 976 (2015) *cert. denied*, 135 S. Ct.2844 (2015). A prosecutor has wide latitude in closing argument to draw reasonable inferences from the evidence and express such inferences to the jury. *State v. Stenson*, 132 Wn.2d 719, 727, 940 P.2d 1239 (1997). Allegations of misconduct based upon a prosecutor's comments during closing argument are reviewed in the context of the entire argument, the issues, the evidence addressed in the argument, and the jury instructions. *State v. Sakellis*, 164 Wn. App. 170, 185, 269 P.3d 1029 (2011).

To prevail on a claim of prosecutorial misconduct, a defendant must establish that the prosecutor's conduct was both improper and prejudicial. *State v. Lindsay*, 180 Wn.2d 423, 430-31, 326 P.3d 125 (2014); *State v.*

Thorgerson, 172 Wn.2d 438, 442, 258 P.3d 43 (2011). “This standard requires the defendant to establish that (1) the misconduct resulted in prejudice that ‘had a substantial likelihood of affecting the jury verdict,’ and (2) no curative instruction would have obviated the prejudicial effect on the jury.” *Sakellis*, 164 Wn. App. at 184 (quoting *State v. Thorgerson*, 172 Wn.2d 438, 455, 258 P.3d 43 (2011)). A claim fails if the alleged misconduct did not result in prejudice that had a substantial likelihood of affecting the verdict. See *State v. Anderson*, 153 Wn. App. 417, 429, 220 P.3d 1273 (2009). Reversal is not required if the defendant failed to request a jury instruction that could have cured any prejudice created by alleged misconduct. *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.3d 432 (2003).

A prosecutor who vouches for a witness's credibility commits misconduct. *State v. Coleman*, 155 Wn. App. 951, 957, 231 P.3d 212 (2010). Vouching generally occurs in two ways: ““(1) the prosecution may place the prestige of the government behind a witness or (2) may indicate that information not presented to the jury supports the witness's testimony.”” *Id.* (quoting *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980)). However, emphasizing the reliability of one witness over another is not vouching for a witness and it is not improper for a prosecutor to persuade the jury to believe one witness over another. *State v. Sandoval*, 137 Wn. App. 532, 541, 154 P.3d 271 (2007).

The Court should reject Wright's claim of prosecutorial misconduct for several reasons. Initially, the statements alleged as misconduct do not vouch for a Castro's credibility as they do not directly or indirectly reflect or espouse the prosecutor's personal opinion or belief that Castro is telling the truth. The first statements only summarize Castro's substantial criminal conviction history. RP 766-69. This history, which was admitted at trial, was offered to support the proposition that Castro would be the type of person who would likely purchase illegal drugs, which Castro testified he was able to do from Wright. RP 160, 219-29, 344-46, 353-55, 359, 361, 363, 365-67, 373, 382, 384, 392-93, 406. Facts and evidence of Castro's criminal history were cited and repeated by Wright in his closing to attack Castro's credibility. RP 781, 783, 789, 790, 793-94, 798.

The second statement, "the deal was worth it", neither vouches for the State's case nor Castro's credibility. The statement acknowledges that the State's "deal" to secure Castro's testimony against Wright was worthwhile because it led to testimony that was beneficial to the State's case. The statement should also be considered within the context of the entire proceedings because it was offered in response to defense counsel's characterization that "[T]he prosecutor will make a bargain with the devil". RP 781. The prosecutor's statement does not amount to vouching for the witness's credibility and, for that reason, they were not improper.

Wright's misconduct claim also fails because he does not, and cannot, show a substantial likelihood that the statements affected the jury's verdict. The jury previously heard testimony regarding Castro's criminal history and the particulars of his "deal" with the State. RP 160, 219-29, 344-46, 353-55, 359, 361, 363, 365-67, 373, 382, 384, 392-93, 406, 812. The trial court instructed the jury to disregard the prosecutor's statement referencing that its "deal" was worth it. RP 802. It is presumed that a jury follows the court's instruction. *State v. Swan*, 114 Wn.2d 613, 661-662, 790 P.2d 610 (1990). The court also instructed the jury it was the sole judge of witness credibility and the weight to be assigned to the evidence in the case, and that it should disregard any attorney comments not supported by the evidence or the law. RP 733, CP 372. The court also told the jury it could consider any personal interest that a witness might have in the outcome or issue and any bias or prejudice a witness may show. *Id.* Wright reminded the jury of these same instructions in his closing. RP 791. Lastly, Mr. Wright failed to request a curative instruction as required to remedy any alleged prejudice. See *Dhaliwal*, 150 Wn.2d at 578. Mr. Wright fails to present any evidence of prejudice from the prosecutor's statements. For this reason, his misconduct claims fail and this Court should affirm Wright's conviction.

CONCLUSION

Based on the foregoing, the State respectfully requests this Court affirm the holdings of the trial court and convictions of Mr. Wright. The State further requests, pursuant to RCW 10.73.160(1) and Title 14 of the Rules of Appellate Procedure (RAP), that this Court impose appellate costs against Mr. Wright if this Court determines the State substantially prevails in this its review of this matter. The State requests that statutory attorney fees and expenses be ordered as allowed under the statute and rules cited above.

Respectfully submitted the 25th day of August, 2016.

DOLLY HUNT
Pend Oreille County Prosecutor



BROOKS CLEMMONS, WSBA # 22896
Deputy Prosecuting Attorney
Pend Oreille County

Certificate of Mailing

I, do hereby certify and declare under penalty of perjury of the laws of the State of Washington that on this date I deposited in the United States Post Office in the City of Newport, Pend Oreille County, Washington a properly stamped and addressed envelope(s) directed to:

Douglas Phelps
Attorney at Law
2903 N. Stout Rd.
Spokane, WA 99206

By: (E-File)

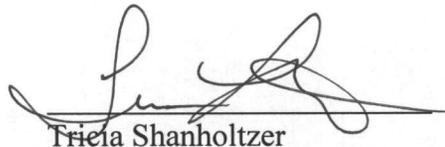
Renee S. Townsley, Clerk
Court of Appeals, Division III
500 North Cedar Street
Spokane, WA 99201

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Containing a true and correct copy of:

Respondent's Opening Brief

August 25, 2016 Newport
Date and Place


Tricia Shanholtzer