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STATE OF WASHINGTON

BY JW

NO. 31451-7-II  
Cowlitz Co. Cause NO. 02-1-01358-6

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

DANNY WAYNE EVANS,

Appellant.

PM 1-13-04

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**BRIEF OF RESPONDENT**

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## I. STATEMENT OF THE CASE & PROCEDURAL HISTORY

Danny Wayne Evans (hereinafter "Appellant") was charged by Information with VUCSA – Manufacture of Methamphetamine (Count 1) and VUCSA – Possession of Methamphetamine with Intent to Deliver (Count 2) for conduct occurring on October 23, 2002. (CP 2). Appellant filed various motions to suppress, which were heard on October 1, 2003 (DVD Taped Proceedings, transcribed by ALLRED-E Transcription, October 1, 2003, hereinafter "RP2" 41). The trial court entered a written ruling following the hearing. (CP 36). The matter proceeded to jury trial on December 22-24, 2004 (Verbatim Report of Proceedings, transcribed by Debra Baxter-Mallett, Volumes 1-3), hereinafter "RP" 5). The jury returned verdicts of guilt on all counts. (CP 122 and 123).

The State agrees with the factual statement set out by Appellant, with the following additions:

1. Appellant was contacted by Deputy Cruser as he was exiting a door on the lower level of the residence at 1101 Cowlitz Way, Kelso, Washington. When Detective Cowan contacted Appellant he had wet hair as if he had just gotten out of the shower. (RP 61, 118).

2. When the search warrant was served at 1101.5 Cowlitz Way, the lights were on, a noticeable chemical odor that is typically

associated with clandestine methamphetamine labs was present, and one of the rear windows was open. (RP 59, 115)

3. Detective Cowan took latent prints from five items: including a triple neck flask, a condenser tube and some additional flasks. (RP 130). Triple necked flasks and condenser tubes can be utilized during the production of methamphetamine. (RP 341-342). Appellant's fingerprints were located on this glassware, which, although clean, was intermixed with clandestine methamphetamine manufacturing laboratory items. (RP 130-31, 241-42).

4. Forensic Scientist Jason Dunn concluded that methamphetamine had been manufactured and could be manufactured again at a later date based upon his examination of the samples submitted from 1101.5 Cowlitz Way. (RP 335).

5. Mr. Kerr rented the residence at 1101 Cowlitz Way from Appellant. (RP 264). Mr. Kerr did not have access to 1101.5 Cowlitz Way and understood it to be owned by Appellant. (RP 265). Only Appellant had a key to 1101.5 Cowlitz Way. (RP 265). Mr. Kerr did not tell Sgt. Tate that other individuals were renting/staying at 1101.5 Cowlitz Way. (RP 279).

6. Appellant did not object to Sgt. Tate's seizure of the briefcase until after the seizure was effected. (Verbatim Report of

Proceedings for October 1, 2003 hereinafter "RP2" 61-62). In the briefcase, Sgt. Tate found methamphetamine, scales and a substance that he believed based upon his training and experience was red phosphorus. (RP 184-194). Sgt. Tate also located a document relating to bank foreclosure on 1101 Cowlitz Way within the briefcase. (RP 192-194). A later search of Appellant's vehicle revealed more documents indicating that Appellant owned the property at 1101 Cowlitz Way. (RP 138-141).

7. A copy of the Complaint and Affidavit for Search Warrant is attached hereto and incorporated by reference herein as Exhibit 1.

## **II. ISSUES PRESENTED ON APPEAL**

- 1. DID THE APPELLANT'S DENIAL OF OWNERSHIP OVER THE BRIEFCASE CONSTITUTE ABANDONMENT?**
- 2. DID THE OMISSION OF A NAMED INFORMANT'S CRIMINAL HISTORY WITHIN THE AFFIDAVIT IN SUPPORT OF SEARCH WARRANT MATERIALLY AFFECT PROBABLE CAUSE?**
- 3. WAS A SPECIAL VERDICT REQUIRED AS TO THE NATURE OF THE CONTROLLED SUBSTANCE THAT APPELLANT MANUFACTURED AND POSSESSED WITH INTENT TO DELIVER?**
- 4. WERE THE APPELLANT'S 5<sup>TH</sup> AMENDMENT RIGHTS VIOLATED AT TRIAL?**

## **III. SHORT ANSWERS**

1. Yes.

2. No.
3. No.
4. No.

#### IV. ANALYSIS

1. **SGT. TATE PROPERLY SEIZED THE ABANDONED BRIEFCASE LOCATED WITHIN THE APPELLANT'S VEHICLE.**

“Needing neither a warrant nor probable cause, law enforcement officers may retrieve and search voluntarily abandoned property without implicating an individual’s rights under the Fourth Amendment or under Article I, Section 7 of our state constitution.” *State v. Reynolds*, 144 Wn.2d 282, 287, 27 P.3d 200 (2001). “However, property cannot be deemed voluntarily abandoned (and thus subject to search if a person abandons it) because of unlawful police conduct.” *Id.* (citations omitted).

Consequently, where a defendant abandoned property and that property was subsequently searched, the defendant may assert a constitutionally protected privacy interest only upon a showing that he or she *involuntarily* abandoned the property in response to illegal police conduct. To establish that the abandonment was involuntary, a defendant must therefore show two elements: “(1) unlawful police conduct and (2) a causal nexus between the unlawful conduct and the abandonment.”

*Id.* at 288 citing *State v. Whitaker*, 58 Wn. App. 851, 853, 795 P.2d 182 (1990).

While the Appellant asserts, under the doctrine of automatic standing, that he may challenge the seizure of the briefcase, such a challenge is without merit when the totality of evidence is considered in this matter. Once the Appellant denied ownership of the briefcase, he can be determined to have voluntarily abandoned the property. He never retracted his abandonment and implied to Sgt. Tate that he was not truly the owner of the briefcase by stating in response to a request to open the briefcase that he “couldn’t” provide permission. This statement clearly suggested that the Appellant could not give permission to search the briefcase because he was not the owner. The Appellant also noted that he did not know to whom the briefcase belonged. Given these facts, under the *Reynolds* court’s analysis, Sgt. Tate was entitled to seize the briefcase without a warrant.

Moreover, it was only after the Appellant denied ownership of the briefcase, that Sgt. Tate informed the Appellant the he suspected the brief case contained evidence of methamphetamine manufacture and trafficking.

In order for the Appellant to retain any type of privacy interest in the abandoned briefcase, he would have to show that the abandonment was conditioned on illegal police conduct and that there was a causal relation between the illegal conduct and the abandonment. The Appellant

has made no such assertion here (nor is there any to be made) and, as such, cannot prevail.

Appellant asserts that mere denial of ownership is insufficient to constitute abandonment of property. Appellant correctly notes that there are no Washington cases dealing specifically with this issue. In support of this notion, he cites *Robles v. State*, 510 N.E. 2d 660 (Ind. 1987); *People v. Cameron*, 73 Misc.2d, 342 N.Y.S.2d 773 (1973), *State v. Casey*, 59 N.C. App., 296 S.E.2d 473 (1982) and *State v. Heuther*, 453 N.W. 2d 778 (N.D. 1990). All of these cases essentially held that denial of ownership was insufficient to constitute abandonment of the property seized and searched by the police.

It is important to note, however, that most courts dealing with this specific issue, as the trial court noted in its written opinion following the suppression hearing (CP 36), take the position that denial of ownership of items within a vehicle constitutes abandonment and forfeiture of a reasonable expectation of privacy. *United States v. Piaget*, 915 F.2d 138 (5<sup>th</sup> Cir. 1990); *United States v. Thomas*, 12 F.3d 1350 (5<sup>th</sup> Cir. 1994); *State v. Huffman*, 169 Ariz. 465, 820 P.2d 329 (1991); *Cooper v. State*, 186 Ga. App. 154, 366 S.E. 2d 815 (1988); *Nation v. State*, 556 S.E. 2d 196 (Ga. Ct. App. 2001); *State v. Zaitseva*, 13 P.3d 338 (Idaho 2000); *Stanberry v. State*, 105 Md. App. 200, 659 A.2d 333 (1995); *People v.*

*Jacob*, 608 N.Y.S.2d 508 (1994); *State v. Nelson*, 76 Or. App. 67, 708 P.2d 1153 (1985); *State v. Ray*, 164 Or. App. 145, 990 P.2d 365 (1999); *State v. Linville*, 190 Or. App. 185, 78 P.3d 136 (2003); *State v. Velasquez*, 994 S.W.2d 676 (Tex. Crim. App. 1999).

In applying the majority holding of abandonment, the trial correctly noted in its written opinion that "...these cases would hold that he has forfeited his reasonable expectation of privacy. Similarly, by representing that he did not know the identity of the owner of the briefcase, he cannot claim a bailment situation. Had the defendant simply remained silent, or refused to identify the owner, the result would be different. However, by expressly denying that the briefcase belonged to him, and by expressly stating that he did not know to whom the briefcase belonged, the property was abandoned." Trial Court's Ruling at 2 (CP 36).

Appellant also cites *State v. Goodman*, 42 Wn. App. 331, 771 P.2d 1057 (1985), for the proposition that Washington Courts have aligned themselves with the position taken by *Robles*, supra, *Cameron*, supra, *Casey*, supra, and *Huether*, supra, namely that merely denying ownership is insufficient to constitute abandonment. In *Goodman*, the police searched the locked trunk of the defendant's vehicle and located a suitcase that had been taken in a burglary. The defendant and driver of the vehicle,

denied ownership of the suitcase then indicated to the police that the suitcase belonged to his passenger. The passenger initially denied ownership but then indicated that he found the suitcase by the side of the road. On appeal the State argued that the defendant lacked standing to challenge the search of the suitcase. The Court of Appeals disagreed, pointing to the doctrine of automatic standing, noting “the mere denial of ownership does not eliminate standing” (citation omitted). The Court went on to say without further analysis or reference to the record, “the State’s assertions of voluntary abandonment and police exercise of community caretaking function are without factual support.” This final statement is clearly dicta and should not be relied upon as a statement that “...shows allegiance with the jurisprudence described above.” Brief of Appellant at 12.

Moreover the facts of the present case are clearly much more substantial in nature than those in the cases Appellant cites. In the present case, Appellant did not respond when asked for the key to the briefcase. When asked if the briefcase belonged to him Appellant stated that he didn’t own the briefcase and wasn’t sure who did. When Sgt. Tate informed Appellant that he believed the briefcase contained evidence related to drug manufacturing and sale, Appellant indicated that he *couldn’t* give Sgt. Tate permission to look in the briefcase. (The clear

implication of Appellant's statement was that he was unable as opposed to unwilling to give permission to search the briefcase). Sgt. Tate then seized the briefcase and informed the defendant that he would be applying for a warrant to search it. The defendant objected to the seizure. Sgt. Tate reiterated that he intended to apply for a search warrant, and that the lawful owner could pick up the briefcase from the police station.

These facts certainly support the State's position that the briefcase was voluntarily abandoned by Appellant, prior to being seized by Sgt. Tate. It is important to note that unlike the cases cited by Appellant, there were three clear statements that proved abandonment: (1) denial of ownership; (2) denial of knowledge as to the true owner; and (3) inability (as opposed to refusal) to give consent to search. Sgt. Tate's actions were clearly appropriate and justified.

**2. THE OMISSION OF THE NAMED INFORMANT'S CRIMINAL HISTORY FROM THE AFFIDAVIT IN SUPPORT OF SEARCH WARRANT DOES NOT MATERIALLY AFFECT PROBABLE CAUSE.**

- a. The affidavit provides sufficient information to satisfy the reliability prong of the *Aguilar-Spinelli* test.**

An affidavit for search warrant based upon an informant must establish the basis of the information and the credibility of the informant. *State v. Jackson*, 102 Wn.2d 432, 433, 688 P.2d 136 (1984). As to informant credibility, informants fall into four categories: (1) The

informant is wholly anonymous, even to the police, (2) the informant's identity is known to the police, but not revealed to the magistrate, (3) The informant's identity, name and address, is disclosed to the police, (4) The eyewitnesses to a crime summon police and the exigencies are such that ascertainment of the information of the informants would be unreasonable. See *State v. Northness*, 20 Wn. App. 551, 555, 582 P.2d 546 (1978). An identified informant has a relaxed standard as to reliability. *Id.* at 558. Additionally, the second category of informant has two subheadings: criminal/professional informants and private citizens. *Id.* at 555.

An informant who has strong motive to provide accurate information because of an offer of reduction of charge may be reliable. See *State v. Bean*, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978); *State v. Smith*, 39 Wn. App. 642, 647, 694 P.2d 660 (1984). Statements against penal interest are considered highly relevant to probable cause analysis. *State v. Lair*, 95 Wn. 2d 706, 711, 630 P. 2d 427 (1981); *State v. O'Connor*, 39 Wn. App. 113, 119, 692 P. 2d 208 (1984); *State v. Patterson*, 37 Wn. App. 275, 679 P. 2d 416 (1984). Admissions against interest are indicia of an informant's veracity. *State v. Hett*, 31 Wn. App. 849, 852, 644 P. 2d 1187 (1982).

Moreover, personal observations of controlled substances within residences have frequently provided probable cause to search. *See State v. Huff*, 33 Wn. App. 304, 306-307, 654 P.2d 1211 (1982) (Informant observed quantity of marijuana in residence 60 hours prior to issuance, information not stale); *State v. Olson*, 32 Wn. App. 555, 556, 648 P.2d 476 (1982) (Informant personally observed quantity of marijuana in residence); *State v. Myers*, 35 Wn. App. 543, 548, 667 P.2d 1142 (1983), *Affirmed* 102 Wn.2d 548, 689 P.2d 38 (1984) (Informant observes “quantity of material thought to be by the informant heroin” at residence on day before affidavit, sufficient for probable cause); *State v. Haywood*, 38 Wn. App. 117, 121, 684 P.2d 1337, *review denied* 102 Wn.2d 1018 (1984) (Reliable informant observed quantity of L.S.D. at a residence within last 60 hours sufficient for probable cause).

In the present case, the Appellant complains that the omission of Informant Lindsey’s criminal history deprived the magistrate of necessary information in making the determination of credibility under the *Aguilar-Spinelli* test. The Appellant is wrong.

First and foremost, Mr. Lindsey was fully identified within the Complaint and Affidavit for Search Warrant. While it is certainly true that Mr. Lindsey is not the typical “concerned citizen” informant, it is also true that Mr. Lindsey is well known within Cowlitz County by prosecutors,

judges, public defenders and police officers alike, as a career criminal.

The fact that his criminal history is not contained within the Complaint and Affidavit for Search Warrant is of no real consequence to this analysis.

Second, Detective Cowan wrote in the Complaint and Affidavit for Search Warrant that Mr. Lindsey provided information about his supplier/manufacturer in exchange for lenience on a pending *felony* matter. This information, pursuant to *Bean, supra*, is sufficient to establish Mr. Lindsey's reliability. Additionally, Detective Cowan wrote in the Complaint and Affidavit that Mr. Lindsey was aware that if the information provided is not accurate, he will not receive any leniency on his pending Attempted Burglary in the Second Degree charge.

Third, Mr. Lindsey made at least one statement that was against his penal interest to Detective Cowan. Mr. Lindsey admits supplying glassware to the Appellant, which he subsequently saw being used later the same day in the clandestine methamphetamine laboratory. While this might not seem particularly incriminating on its face, when one considers that the Appellant was Mr. Lindsey's methamphetamine supplier and the remarkable detail of Mr. Lindsey's observations while inside 1101.5 Cowlitz Way, it is clear that Mr. Lindsey, by providing glassware to be

used in the clandestine methamphetamine laboratory, was himself an accomplice to the crime.

Fourth, the observations of Mr. Lindsey regarding what he saw within 1101.5 Cowlitz Way were, as indicated above, remarkably detailed. Mr. Lindsey described cans of acetone (an ingredient in the methamphetamine manufacture), quart-size jars containing bi-layer liquids (typical in methamphetamine manufacturing cases), and coffee filters with dark red staining (also typical in methamphetamine manufacturing cases; part of the filtering process). Mr. Lindsey identified the method used at the residence as “red p,” which is street slang for the red phosphorous/iodine method of methamphetamine manufacturing. More importantly, Mr. Lindsey also observed “Scott” performing the extraction of pseudoephedrine while he was present in the residence. These details were confirmed by Detective Cowan, who had extensive training in the manufacture of methamphetamine, as being consistent with the red phosphorus/iodine method of production. Such detailed observations clearly enhance Mr. Lindsey’s credibility.

Finally, to the extent possible, Detective Cowan did corroborate Mr. Lindsey’s allegations. He queried Mr. Lindsey about his knowledge of the drug trade, specifically methamphetamine, and found it to be accurate. Detective Cowan confirmed that the Appellant was the property

owner of 1101 Cowlitz Way. Detective Cowan also determined that the Appellant had two prior felony convictions for violating the Uniform Controlled Substances Act.

**b. A hearing pursuant to *Franks v. Delaware* was not required.**

Affidavits for search warrants are presumptively valid. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 2684, 57 L. Ed. 2d 667 (1978). In *Franks v. Delaware*, 438 U.S. 154, 155-56, 57 L.Ed. 2d 667, 98 S.Ct. 2674 (1978), the United States Supreme Court held that where:

Appellant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the Appellant's request.

"The *Franks* test for material misrepresentation applies to allegations of material omissions." *State v. Garrison*, 118 Wn. 2d 870, 872, 827 P. 2d 1388 (1992) citing *State v. Cord*, 103 Wn. 2d 361, 367, 693 P. 2d 81 (1985). "Allegations of negligence or innocent mistake are insufficient." *Franks*, supra, at 171. "Washington courts have consistently held that misstatements or omissions in affidavits supporting search warrants may only affect a warrant's validity if they are (1) material and (2) made deliberately or recklessly." *State v. O'Connor*, 39 Wn. App. 113, 116-17, 692 P. 2d 208 (1984), review denied, 103 Wn. 2d 1022 (1985). For

recklessness to be shown, it must be proven that the affiant “ ‘in fact entertained serious doubts as to the truth’ of facts or statements in the affidavit.” *Id.* citing *United States v. Davis*, 617 F. 2d 677 (D.C. Cir.1979), *cert. denied*, 445 U.S. 967, 100 S.Ct. 1658, 64 L.Ed.2d 243 (1980).

Doubts of this caliber can be demonstrated by “(1) actual deliberation on the part of affiant, or (2) the existence of obvious reasons to doubt the veracity of the informant or the accuracy of his reports.” *Id.* For a misstatement or omission to be material, it must be “necessary to the finding of probable cause.” *State v. Gentry*, 125 Wn. 2d 570, 604, 888 P. 2d 1105 (1995), *cert. denied*, 516 U.S. 843 (1995). The mere fact that a material fact is omitted, does not establish recklessness. *State v. Garrison*, *supra*, at 873. “If these requirements are not met, the inquiry ends.” *Id.* at 873.

“If these requirements are met, and the false representation or omitted material is relevant to the establishment of probable cause, the affidavit must be examined. If the relevant false representations are the basis of attack, they are set aside. If it is a matter of deliberate or reckless omission, these omitted matters are considered as part of the affidavit. If the affidavit with the matter deleted or inserted remains sufficient to support a finding of probable cause, the suppression motion fails and no hearing is required. However, if the altered content is insufficient, Appellant is entitled to an evidentiary hearing.”

*Id.*

The burden rests with the Appellant to prove, by a preponderance of evidence that an intentional misrepresentation or a reckless disregard for the truth on the part of the affiant exists. *State v. Hashman*, 46 Wn. App. 211, 729 P. 2d 651 (1986), *review denied*, 108 Wn. 2d 1021 (1987).

In the present case, Appellant alleges that the omission of Mr. Lindsey's criminal history within the Complaint and Affidavit for Search Warrants was of either an intentional misrepresentation or reckless disregard for the truth by Detective Cowan. Even if correct (which the State *does not* concede), it merits a hearing pursuant to *Franks v. Delaware*, *supra*.

First, there is absolutely *no evidence* that the omission of Mr. Lindsey's criminal history was any greater than simple negligence on the part of Detective Cowan. The Appellant contends that simply because of Mr. Lindsey's extensive criminal history, that Detective Cowan deliberately withheld this information from the magistrate and somehow conspired with the elected prosecutor to do so. This is absolutely scurrilous speculation on the part of the Appellant. As previously indicated, Mr. Lindsey is a well-known criminal within Cowlitz County. The Appellant cannot point to any actual deliberation on the part of Detective Cowan to withhold this information from the magistrate. Likewise, the Appellant cannot point to facts indicating that Detective

Cowan entertained serious doubts as to Mr. Lindsey's veracity with respect to the information he provided. In fact, the opposite is true; Detective Cowan makes clear in the Complaint and Affidavit that the information Mr. Lindsey provided is consistent with his own training and experience. Furthermore, there is, once again, *no evidence*, to support the assertion that Detective Cowan somehow conspired with the elected prosecutor to withhold information from the magistrate.

Second, the fact that Mr. Lindsey is a convicted thief, had a murder charge dismissed and was apparently under investigation for other theft crimes is not material or necessary to a finding of probable cause in this matter. The question must be asked: what possible relevance does a *dismissed* murder charge have on the determination of either the informant's veracity or probable cause? The same question applies to the theft allegations that were under investigation. Clearly, neither the dismissed murder allegation, nor the fact that Mr. Lindsey was apparently under investigation for other thefts are relevant to this inquiry.

Even if this material is inserted into the Complaint and Affidavit, the underlying facts reported by Mr. Lindsey remain ultimately unchanged. His observations are still corroborated by Detective Cowan as being consistent with a clandestine methamphetamine lab. He was still receiving leniency for a pending felony matter in exchange for the

information. He still was an accomplice to the manufacturing operation by providing glassware that is subsequently used in the process.

Moreover, in *State v. Lane*, 56 Wn. App 286, 295, 786 P. 2d 277 (1989), the Court of Appeals concluded that the omission of an informant's criminal history did not affect a finding of probable cause. The Court of Appeals further noted "given our common experience that a person who is in a position to set up a controlled buy often has had prior contact with the criminal justice system, we hold that the magistrate was not misled." *Id.* Surely the same can be said of an individual such as Mr. Lindsey. Common experience would dictate that any individual with access to clandestine methamphetamine labs more than likely would have had prior contacts with the criminal justice system.

The Appellant has simply not met his burden to show by a preponderance of the evidence that the lack of Mr. Lindsey's criminal history within the Complaint and Affidavit, was either a material omission, intentional misrepresentation or a reckless disregard for the truth. Given the utter lack of concrete evidence presented by the Appellant, at worst, Detective Cowan was merely negligent in not including Mr. Lindsey's criminal history within the Complaint and Affidavit.

More importantly, the trial court in its written ruling (CP 36) squarely dealt with these issues. The trial court concluded that the CI's criminal history was not critical to a finding of probable cause. The trial court reasoned "...even had the information been included in the affidavit, the affidavit information would have been sufficient to establish probable cause. The magistrate was aware that the informant had been involved in criminal activity and was seeking leniency. In addition, any informant who personally observed and even assisted in the manufacturing of methamphetamine would have had close ties to the drug world and would most likely have a criminal history. The informant's criminal history cuts both ways and cannot be said to vitiate probable cause." Citing *State v. Taylor*, 74 Wn. App. 11, 118, 872 P.2d 53 (1994) (CP 36).

**3. A special verdict differentiating between methamphetamine base and methamphetamine hydrochloride was not required.**

RCW 69.50.401(a)(1)(ii) provides in pertinent part:

Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to: amphetamine or methamphetamine is guilty of a crime and upon conviction may be imprisoned for not more than ten years or (A) fined more than twenty-five thousand dollars if the crime involved less than two kilograms of the drugs or both such imprisonment or fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms

and not more than fifty dollars for each gram in excess of the first two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost.

RCW 69.50.401(a)(1)(iii) provides in pertinent part:

Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection with respect to: any other controlled substance classified in Schedule I, II or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

A statute that is clear does not require the application of statutory construction rules. *State v. Wilson*, 125 Wn. 2d 212, 216, 883 P. 2d 320 (1994). If, however, the statute is ambiguous, then the Court's purpose in construing the statute "is to ascertain and give effect to the intent and purpose of the Legislature." *State v. Williams*, 62 Wn. App. 336, 338, 813 P. 2d 1293 (1991) (citing *Tommy P. v. Board of Comm'rs*, 97 Wn. 2d 385, 645 P. 2d (1982)). A statute is ambiguous if it is susceptible to two or more reasonable interpretations. *State v. Sunich*, 76 Wn. App. 202, 206, 845 P. 2d 1 (1994).

When attempting to determine the intent of the statute, “[the Court] must recognize that statutes must be construed as a whole and all language used should be given effect.” *Williams*, supra, at 338. Moreover, “[s]tatutes should not be construed so as to render any portion meaningless or superfluous.” *Id.* (citing *Stone v. Sheriff’s Department*, 110 Wn. 2d 806, 755 P. 2d 736 (1988)). Furthermore, unlikely, absurd, or strained consequences resulting from a literal reading should be avoided. *State v. Fjermestad*, 114 Wn. 2d 828, 835, 791 P. 2d 897 (1990) (citing *State v. Stannard*, 109 Wn. 2d 29, 742 P. 2d 1244 (1987)). Finally, “all provisions of the Act must be considered in their relation to each other, and, if possible, harmonized to insure proper construction of each provision.” *Williams*, supra, at 338.

The State was not required to submit a unanimity instruction in this case or request a special verdict. It is clear from the testimony that the methamphetamine in solution (“free form” or methamphetamine-base”) was manufactured in this case. Methamphetamine in solution was found within the lab itself, while methamphetamine in a useable solid form was found in the truck. In order to have solid methamphetamine, one must necessarily produce methamphetamine in solution. As Mr. Dunn pointed out, “methamphetamine” within the forensic science community includes both forms. Additionally, in order to produce methamphetamine

hydrochloride, or the salt form found in the defendant's briefcase, one must necessarily produce "free form" or methamphetamine-base. To that extent, because "free form" or methamphetamine-base was found in the lab itself, the Appellant was properly sentenced with a statutory maximum of 10 years.

Furthermore, the very fact that methamphetamine in solution (i.e. "free form" methamphetamine or methamphetamine-base) was found within the lab itself also defeats the Appellant's assertions. As the State argued to the jury during closing, the defendant had methamphetamine in solution simply waiting to be turned into a usable form. There could not have been any confusion between this methamphetamine and that found in the brief case, as the State presented no evidence of the origin of the methamphetamine salt found in the brief case. Moreover, methamphetamine hydrochloride which was found in the briefcase, was clearly used to support a different charge altogether. It is also important to note that Appellant did not request a unanimity instruction or a special verdict at the time of trial. Appellant also did not object to the instructions as given by the trial court. To that extent, Appellant cannot now be heard to complain about the lack of such instructions or special verdict forms.

The State is cognizant of this Court's recent decision in *State v. Morris*, \_\_\_ Wn. App. \_\_\_ ; 98 P.3d 513 (2004), which holds that

possession with intent to deliver methamphetamine hydrochloride (salt form of methamphetamine) is to be sentenced under RCW 69.50.401(a)(1)(iii). Such is not the case with respect to “free form” methamphetamine or methamphetamine-base. To that extent, the trial court properly sentenced Appellant with a 10-year maximum standard range with respect to VUCSA – Manufacture of Methamphetamine.

Finally, Appellant cites *Blakely v. Washington*, 542 U.S. \_\_\_\_ (2004) in support of his argument that the jury should have been instructed as to unanimity or in the alternative been provided with special verdict forms. As *Blakely* dealt with Washington’s statutory scheme relating to the imposition of exceptional sentences, it is distinguishable and clearly not applicable to the present case. The evidence used to support each charge was abundantly clear. Even the trial court recognized this fact at the time of sentencing. DVD Taped Proceedings, February 11, 2004, RP2 133). Additionally, it is also important to note that the trial court at sentencing, at the request of Appellant, found that the two crimes charged constituted the same criminal conduct and merged them for the purposes of sentencing. (DVD Taped Proceedings, February 11, 2004, RP2 135) This alleviated any potential harm of which Appellant now complains.

4. **Appellant's 5<sup>th</sup> Amendment rights were not violated.**

“The right to remain silent, or the privilege against self-incrimination, is based upon Amendment V of the United States Constitution which provides in pertinent part ‘[n]o person... shall be compelled in any criminal case to be a witness against himself...’” *State v. Sweet*, 138 Wn.2d 466, 480, 980 P.2d 1223 (1999) “The purposes of the right is... ‘to spare the accused from having to reveal, directly or indirectly, his knowledge of facts relating him to the offense or from having to share his thoughts and beliefs with the Government.’” *State v. Easter*, 130 Wn.2d 228, 241, 922 P.2d 1285 (1996) (citations omitted). “The State bears the burden of showing a constitutional error was harmless.” *Id.* at 242. A Court will “...find constitutional error harmless only if convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error, *State v. Aumick*, 126 Wn.2d 442, 430, 894 P.2d 1325 (1995) and where the untainted evidence is so overwhelming it necessarily leads to a finding of guilt.” *Id.* citing *State v. Whelchel*, 115 Wn.2d 708, 728, 801 P.2d 948 (1990). “Once the suspect is arrested and *Miranda* rights are read, the State violates a defendant’s Fifth and Fourteenth Amendment rights by introducing evidence of his exercise of *Miranda* rights as a substance evidence of guilt. *State v. Curtis*, 110 Wn. App. 6, 11-12, 37 P.3d 1274 (2002).

Appellant relies upon two cases in support of the notion that the State violated the defendant's right to remain silent, *State v. Curtis*, supra, and *Douglas v. Cupp*, 578 F.2d 266 (9<sup>th</sup> Cir. 1978). Both contained exchanges between a prosecutor and police officer and both are distinguishable from the present case.

During trial in *Curtis*, supra at 9, the following exchange occurred between the prosecutor and the police officer:

Q. Go ahead. And you had him—once he got out, then you—

A. I read him his *Miranda*, his constitutional rights.

Q. Was anything said at that time?

A. He refused to speak to me at the time, and wanted an attorney present.

In ruling that the State violated the defendant's right to remain silent, the Court of Appeals noted that the State did not "harp" on the defendant's exercise of his constitutional rights, but rather "the prosecutor asked Officer Turely directly whether Mr. Curtis said anything in response to receiving his *Miranda* rights. 110 Wn. App. at 13. Also of note was the fact that the defendant unequivocally invoked his rights at the time of arrest.

In *Douglas v. Cupp*, supra, the exchange between the prosecutor and the police witness occurred thusly:

Q. Who arrested Mr. Douglas?

A. I did.

Q. Did he make any statements to you?

A. No.

(Prosecutor): That's all the questions I have.

In finding a violation of the defendant's Fifth Amendment rights, the Court noted "the prosecutor had purposefully elicited the fact of silence in the face of arrest." See *Curtis*, 110 Wn. App. at 14. The court was also concerned that the jury might have inferred guilt because of his silence and that his defense was fabricated. *Id.*

The exchange between the deputy prosecutor and Sgt. Tate in the present case occurred as follows:

Q. Okay. Now, um, did you speak with Mr. Evans – or, rather did you ask Mr. Evans, um any questions regarding [the] clandestine methamphetamine lab?

A. Yeah, I started to ask some of those questions. I asked about, you know, we're processing a lab here, um do you want to talk to me about that? I also asked some of those type of questions. I also asked about knowledge issues.

Q. Okay. What was – what exactly did he tell you with respect to, um, [the] search that was being conducted at that time?

A. Um, he didn't answer specifically, um, about those other than to say we're going to do what we're going to do."

RP 178.

Appellant asserts that this exchange impermissibly commented on his right to remain silent. Appellant also characterizes the information elicited by the deputy prosecutor as purposeful. Neither contention has any merit. The deputy prosecutor's question was clearly designed to only elicit what the Appellant said to Sgt. Tate after he waived his *Miranda* warnings. Eliciting testimony about a defendant's statements following a waiver of *Miranda* is clearly proper. It was also proper, since the Appellant chose to make the statement following *Miranda* warnings, for the State to argue reasonable inferences from the statement. The fact that Appellant would only say "you're going to do what you're going to do" is certainly indicative of evasive behavior. Unlike the cases cited by Appellant, there was no express invocation of the right to remain silent, nor was Appellant's statement ever mentioned again during trial. Sgt. Tate's answer to the question was simply not an impermissible comment on Appellant's right to remain silent. Had Appellant made no statement, it would have been impermissible for the State to elicit such testimony. Here, Sgt. Tate merely clarified how it was the Appellant answered the question.

Moreover, after reviewing the transcript during trial, even the trial court concluded that no impermissible commentary on Appellant's right to remain silent occurred. The trial court noted:

In reviewing the transcript, the wording is key, the wording is key. "He didn't answer that question specifically, he said, X." That is different than saying: He didn't answer the question. I think it is different enough to avoid the problem. I asked the person if they liked applesauce. They didn't answer that questions specifically, what they said was they didn't like canning. I asked about this, he didn't respond to my specific question, what he said was something else. I don't think that is introducing, in this context, with this very specific answer, introducing his refusal or his invocation of the Fifth Amendment right. It's a very specific ruling based on a very specific question and answer.

RP 294-95.

Even if Sgt. Tate's comment about how Appellant answered his question is error (and the State *does not* concede this point), it was clearly harmless error given the overwhelming amount of evidence of the Appellant's guilt in this matter. First and foremost, Appellant's fingerprints were located on two pieces of glassware found intermixed with chemicals and other items used to produce methamphetamine (condenser tube and flask). No other fingerprints were found on any other items. Second, at the time of his arrest, Appellant was in possession of nearly two ounces of finished product methamphetamine in a briefcase containing default documents for the property at 1101 Cowlitz Way. In the same briefcase, Sgt. Tate located a set of scales, which are commonly used in the drug trade. Third, Mr. Kerr testified that Appellant was the only individual who had access to the property at 1101.5 Cowlitz Way, where the clandestine methamphetamine lab was located. According to

Mr. Kerr, who rented the main house from Appellant, only the Appellant had a key to 1101.5 Cowlitz Way. Fourth, at the time the search warrant was executed Appellant's truck was at the scene. Fifth, while executing the search warrant, the officers detected a strong odor of chemicals, found that the rear window to the residence was open and the lights were on. Appellant was contacted a short time later, leaving 1101 Cowlitz Way (main house) with wet hair (suggesting that he recently showered). This was after Mr. Kerr allowed the detectives to search the residence for any contraband items or Appellant. In short, the outcome of the trial would not have been different had Sgt. Tate not made mention of Appellant's not directly answering his questions.

## V. CONCLUSION

For all of the above reasons, this Court should affirm the trial court and dismiss this appeal.

Respectfully submitted this 27th day of January 2005.

Susan I. Baur  
Prosecuting Attorney

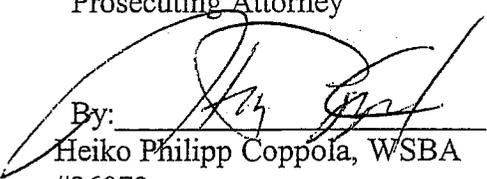
By:   
Heiko Philipp Coppola, WSBA  
#26073  
Deputy Prosecuting Attorney  
Representing Respondent

Exhibit 1

COWLITZ COUNTY  
DISTRICT COURT

7007 OCT 24 A 10 32

**DISTRICT JUSTICE COURT OF WASHINGTON  
FOR COWLITZ COUNTY**

State of Washington

Complaint and Affidavit for Search Warrant

Plaintiff,

No.

Vs

Defendant(s),

Danny Wayne Evans Dob:011469  
"Scott" unknown last name white male  
Detached dwelling/structure behind 1101 Cowlitz Way  
Kelso, Washington, 98626

State of Washington )

) :Ss

County of Cowlitz )

I, Michael J. Cowan, being duly sworn on oath depose and say:

That I am a commissioned police officer for the City of Kelso, Washington, and have been so employed for the past fifteen years. I am currently assigned with the Cowlitz/Wahkiakum Narcotics Task Force (C/WNTF) as a narcotics detective. I have previously been assigned as a general investigations detective and patrol officer for the City of Kelso.

I have had numerous phases of police training, which includes crime investigation, preservation of evidence, search and seizure, felon apprehension, and other police operations. I have also received training related to various controlled substances and their manufacturing, to include heroin, cocaine, methamphetamine, and marijuana. I received this training through the Washington State Basic Law Enforcement Academy for certification as a police officer, and during in-service training through the Kelso Police Department. In addition, I have attended specialized drug

EXHIBIT 1

enforcement and investigation training courses which include sixteen (16) hours of basic drug investigation for the patrol officer from the Washington State Law Enforcement Satellite Training Program, twenty-four (24) hours of asset forfeiture training from the Investigation Training Institute, forty (40) hour course on electronic surveillance techniques from the State of Montana Law Enforcement Academy, forty (40) hour course on clandestine methamphetamine lab safety and operations from Cadre Inc, forty-four (44) hours of training on current drug trafficking trends from the Western States Information Network, sixty-four (64) hour course on marijuana investigation and eradication with the Department of Interior (Bureau of Indian Affairs), and eighty (80) hours of basic drug investigation from the (DEA) Federal Drug Enforcement Administration.

I have conducted in excess of sixty investigations into violations of the Uniform Controlled Substances Act. I have arrested numerous individuals for controlled substance violations. During these investigations, I have interviewed drug dealers, drug users, and drug informants. I have conducted surveillance on traffickers of controlled substances on numerous occasions and I am familiar with their lifestyles and methods of operation. I have successfully obtained search warrants and have been involved in the execution of at least fifty search warrants for narcotics. I have seized a significant amount of varying types of controlled substances and related evidence.

I have personally purchased cocaine, methamphetamine, marijuana, and LSD in an undercover capacity as a narcotics detective. I have been involved in the direction of confidential informants who have purchased heroin, cocaine, methamphetamine, marijuana, and other types of controlled substances.

Through the above mentioned training and experience I know that controlled substances are normally sold during a somewhat short contact between the buyer and seller, and that during this time an exchange of United States currency and/or property takes place for the drugs purchased. I also know that the narcotics dealer (seller) usually notifies his or her customers when the illicit drugs are available. The buyer then goes to the seller's residence, calls the seller on the telephone, or leaves his/her telephone number on the seller's pager to arrange a purchase of the controlled substance. I know that it is not uncommon for narcotics customers or potential customers to telephone the residence of a narcotics trafficker and attempt to set up a sale with whomever answers the telephone, including a police officer acting in an undercover capacity. I have personally been involved in just such an incident where a potential customer has called the residence where I have been serving a search warrant and where the caller has negotiated with me to buy illegal drugs.

The seller usually packages the controlled substance in a piece of paper or a plastic baggie, and it is then usually sold in quarter-gram, half-gram, one-gram, sixteenth ounce, eighth ounce, quarter ounce, half ounce, one ounce, one pound, one kilogram, or larger quantities depending on the level of dealing.

I know that the seller frequently keeps some type of record to keep track of orders, or who owes money from previous transactions. These records, (or ledgers) are usually kept in a notebook or on small slips of paper that normally have abbreviated names and numbers written on them showing persons who are sold to and the amount of monies used or owed.

I know, from personal experience, that narcotics traffickers often take photographs of friends and/or co-conspirators, or have photographs taken of themselves, documenting their narcotics use and/or manufacture as well as "trophy" photos of narcotics, narcotics paraphernalia and weapons.

I have learned through the aforementioned training and experience that individuals who traffic in controlled substances are frequently involved in other crimes, such as robbery, burglary, theft, receiving stolen property and/or possession of stolen property because controlled substances are expensive to purchase. Drug traffickers normally accept currency and/or stolen property in trade for the controlled substances. I have personally recovered stolen property and large amounts of United States currency during the service of search warrants.

I know that traffickers of controlled substances often possess firearms and other weapons for the purpose of protecting themselves, their drugs, and their money from others. I have personally recovered firearms and other weapons, such as knives, clubs, and martial arts devices during the service of search warrants.

I know that traffickers in controlled substances often fortify the entrances and windows of their dwellings and/or other buildings used to facilitate the trafficking in controlled substances, or in some cases, the entrances to individual rooms within their dwellings or buildings. The drug traffickers commonly fortify entrances by the use of metal security doors with matching metal door jams, deadbolt locks and bars across the doorframe. Windows maybe fortified by nailing or screwing them permanently shut. The fortifications to the trafficker's dwellings and buildings are commonly done so as to protect them and their narcotics supply from robbery and to delay or otherwise impede entry by law enforcement personnel. By delaying or impeding entry of law enforcement personnel narcotics traffickers hope to give themselves enough time to dispose of any narcotics or narcotics-related evidence before entry is gained.

I also know that individuals who sell controlled substances frequently conceal the drugs they possess for future sales or consumption, as well as scales, packaging materials, and records of the sales, on their persons, within their residences and surrounding curtilage, and within their vehicles. This is to prevent detection from the people they deal with and sell to, as well as from law enforcement authorities. I have recovered or observed such items of contraband concealed in purses, fanny packs, clothing, furniture, boxes, and in other closed containers during the service of search warrants for controlled substances. A current trend in avoiding police detection utilized by drug traffickers is to bury their illicit drugs and monies from drug sales in or around the yard area surrounding their residence. These drugs and monies are often wrapped in plastic and covered by aluminum foil, and are sometimes concealed in jars or similar containers.

I know that narcotics traffickers often use counter-surveillance driving techniques to avoid surveillance and detection by law enforcement officers. These techniques include a variety of driving methods. Among these are the use of sudden lane changes, speed changes, U-turns, sudden stops to allow traffic to go by, and the running of various traffic signals. In addition, counter-surveillance driving includes driving in direct routes to and from various locations. An example of this type of driving would be the situation where a trafficker leaves the scene of a narcotics transaction to return to the location he or she is using to store narcotics, which for purposes of

illustration is only a mile, but the trafficker will drive many extra miles in a circuitous manner before actually going to the location. By closely watching surrounding traffic when using these driving techniques narcotics traffickers hope to catch law enforcement officers obviously following them.

I know that the manufacture, importation, and distribution of narcotics are frequently, if not almost always, a continuing criminal enterprise takes place over weeks, months, and often years. Although the illicit drug inventory of the organization might fluctuate over time, I would expect that records associated the manufacture, importation, and distribution of narcotics would likely be maintained on a continuing basis. In addition, equipment and paraphernalia used in the manufacture, importation and distribution of these controlled substances, such as scales, packaging materials and other items. The seizure of such records, equipment and paraphernalia, despite any lapse of time between the events described within this affidavit and the anticipated searches by this warrant would provide evidence of the events recorded in this affidavit. Such records would document the commission of not only narcotics trafficking violations, but the scope of this criminal organization, related members, and other overt acts committed in furtherance of the objectives of the organization.

I know from my training and experience that many people manufacture their own narcotics through a clandestine lab process. Methamphetamine and Amphetamine are the most common types of drugs that are made with this process. These "labs" are the most frequently done in homes, motel rooms, or other structures which do not normally house a lab. The labs are hazardous because of the ingredients used in the cook, various vapors which they give off, the possible chemical reactions that can take place, the conditions of the lab, and the education and experience of the lab operator. These labs can explode during the cook, or give off a hazardous gas or vapor. The ingredients can explode due to improper storage, and the under-experienced cooks run the lab incorrectly, causing fire or explosion.

Recently, an additional method for the manufacture of methamphetamine has surfaced in the Pacific Northwest. It challenges law enforcement's efforts to control labs by using chemicals and solvents readily available on the open market. Traditionally, recognition of the clandestine lab often is aided by the presence of laboratory glassware on site. This method, however, does not require any specific glassware. Common household items, such as; buckets, jars, funnels, coffee filters, etc., are all the equipment that might be required. One of the ingredients, Pseudoephedrine, is commercially available in tablet form (Sudafed, Pharmacist value pseudoephedrine, Mini-Thins, Actefed, Max Alert and others). While one or two empty bottles in the trash might indicate a bad cold or sinus problem, anything beyond that is a "clue" of lab activity. Some other common ingredients used in cooks are ephedrine, pseudoephedrine, many acids, red phosphorus, lye, ether, freon, ice and dry ice, anhydrous ammonia gas, lithium or sodium metal and others.

I have been involved with the processing of no less than 5 clandestine Methamphetamine labs. During my clandestine lab training I manufactured Methamphetamine.

Investigation:

I have probable cause to believe that a controlled substance, to wit: Methamphetamine is being manufactured, used, kept, sold or otherwise disposed of by Danny Wayne Evans Dob:014169, a white male, located at dwelling behind the residence at 1101 Cowlitz Way in Kelso, Washington 98626. I have personally observed this dwelling that is a small single story family dwelling of wood frame construction. This dwelling/structure is located northeast behind 1101 Cowlitz Way. The residence is blue in color. The front entrance of the residence is facing south. There are no numbers affixed to this detached dwelling/structure, but a large satellite dish is affixed to the front of the dwelling/structure.

On 10/23/2002, Deputy Troy Brightbill contacted and subsequently arrested Gary Lindsey for an Attempted Burglary in the 2<sup>nd</sup> Degree. Lindsey who lives in Cowlitz County told Deputy Brightbill he was in search of leniency for the Attempted Burglary 2<sup>nd</sup> Degree he was arrested for. Lindsey told Brightbill he was an illicit drug "methamphetamine" user. Lindsey told Deputy Brightbill he would tell law enforcement officers where and who he obtains his methamphetamine from.

Upon arriving at the Hall of Justice Deputy Brightbill contacted me at the Cowlitz-Wahkiakum Narcotics Task Force office and related what had transpired.

I then interviewed Gary Lindsey about his knowledge and involvement in the clandestine methamphetamine lab he had described to Deputy Brightbill. Lindsey told me he has purchased crystal methamphetamine from a Dan Evans and "Scott" who "cook", manufacture methamphetamine using the "red-P" method in a small one dwelling/structure located behind Evans' residence at 1101 Cowlitz Way. Evans admitted to be addicted to methamphetamine that he stated he uses on a daily basis. According to Lindsey, Evans and "Scott" have used this dwelling/structure to cook about 1/2 to 1 ounces amounts methamphetamine about every other day. Lindsey states he has purchased methamphetamine from Evans and Scott at this dwelling/structure on numerous occasions. Lindsey told me that on the evening of 10/21/2002 he went to this dwelling/structure behind 1101 Cowlitz Way to purchase methamphetamine. He contacted Scott at the dwelling and purchased \$20 worth of methamphetamine. During this contact Lindsey asked to use the bathroom. Scott let Lindsey into the dwelling/structure to use the bathroom. Lindsey said he observed 4-5 metal cans he thought contained "Acetone", 3-4 off green in color "Ball" Mason jars of the quart size. He said he had supplied these jars to Evans earlier. Lindsey described the jars as having a clear to yellowish liquid inside. Lindsey said one of the jars had to separate layers of an unknown liquid inside. Lindsey stated Scott was boiling an unknown substance that "looked like water" in Corning cook ware sauce pan "breaking pills down" which he pulled out of the stove. Lindsey stated he saw a dark red in color substance in coffee filters and a jar.

Based on my training and experience of methamphetamine manufacturing, the information Lindsey gave me is consistent with the manufacturing of methamphetamine, specifically "pill extraction" process. The containers of suspect Acetone are commonly used in the extraction process in methamphetamine manufacture processing of pseudoephedrine pills. The dark colored substance in the coffee filters is consistent with the use of red phosphorus in methamphetamine manufacturing.

I then contacted Cowlitz County Prosecuting Attorney Sue Baur who was advised of the

information Lindsey provided. PA Baur spoke with Deputy Brightbill about the Attempted Burglary 2<sup>nd</sup> Degree he was arrested for. After talking with Baur, Deputy Brightbill advised Lindsey if he provided information on his methamphetamine supplier he would be charged with Trespassing 1<sup>st</sup> Degree. Lindsey is aware that if the information provided is not correct, he will not receive leniency for his pending felony charge and he will not be used as an informant.

Lindsey has demonstrated his knowledge of controlled substances by detailing his involvement with controlled substances, specifically methamphetamine. He stated he has used and sold methamphetamine over the past several months and is familiar with how methamphetamine is packaged, weighed, and sold in varying amounts. Lindsey stated he has sold methamphetamine in small amounts of less than one gram packaged individually in plastic bags. Lindsey demonstrated current street level methamphetamine prices within the Cowlitz County area. In my conversations with Lindsey, he gave me specific methamphetamine and marijuana trafficking information that I know to be true based on other current Cowlitz-Wahkiakum Narcotics Task Force, C/WNTF narcotics intelligence within our community.

In checking Cowlitz County Intra-Net records the address of 1101 Cowlitz Way is owned by Danny W. Evans. A criminal history check of Danny Wayne Evans Dob:011469 found he has been convicted of two prior felony Violations of the Uniform Controlled Substance Act, VUCSA. Cowlitz County records further show Evans has resided at 1101 Cowlitz Way in Kelso, Washington

Based upon the forgoing information, I submit there is probable cause to believe that in the above described detached dwelling/structure at 1101 Cowlitz in Kelso, Washington, evidence is being concealed, specifically methamphetamine manufacturing, related methamphetamine drug paraphernalia, and illicit drug records; which is evidence, and instrumentalities of crimes against the State of Washington, that is, the unlawful distribution, sales, and possession of methamphetamine, which are violations of the Uniform Controlled Substance Act. Therefore, I request a search warrant be issued, directed to any peace officer of the State of Washington, commanding him/her to search the dwelling/structure located at 1101 Cowlitz way in Kelso, Washington, and the person of Daryl Danny W. Evans and/or "Scott" unknown last name white male and seize the following items:

- 1) All controlled substances including but not limited to methamphetamine;
- 2) paraphernalia for using, packaging, processing, weighing and distributing controlled substances, including but not limited to scales, funnels, sifters, grinders, containers, plastic bags or materials used to contain methamphetamine or other controlled substances.
- 3) Books, letters, papers, notes, pictures, photographs, video and/or audio cassette tapes, or documents relating names, addresses, telephone numbers, and/or other contact/identification information relating to the growing, possession, processing or distribution of methamphetamine and other controlled substances;
- 4) records, receipts, notes, letters, ledgers and other papers relating to the growing,

possession, processing, or distribution of methamphetamine or other controlled substances;

- 5) U.S. currency, foreign currency, financial instruments, and records relating to income and expenditures of money and wealth from methamphetamine or other controlled substances including but not limited to money orders, wire transfers, cashier's checks, bank statements, passbooks, checkbooks, and check registers;
- 6) personal property which tend to identify the person(s) in residence, occupancy, control or ownership of the premises that is the subject of this warrant, including but limited to cancelled mail, deeds, leases, rental agreements, photographs, personal telephone books, utility and telephone bills, statements, identification documents, and keys;
- 7) airplane tickets, notes and itineraries, airline schedules, bills, charge card receipts, hotel/motel/rental car statements, correspondence with travel agencies and other travel-related businesses, airline/rental car/hotel/frequent flier cards and statements, passports and other papers relating to domestic and international travel;
- 8) fruits of criminal enterprise, or property held or acquired in violation of RCW 69.50.505;
- 9) weapons; including but not limited to firearms, ammunition, knives, clubs, swords, martial arts devices, chemical irritants and electric "stun guns";
- 10) computers, and associated data processing equipment including disks and diskettes, and fax machines;
- 11) documentation which would support the crimes of conspiracy to manufacture and/or conspiracy to traffic methamphetamine.

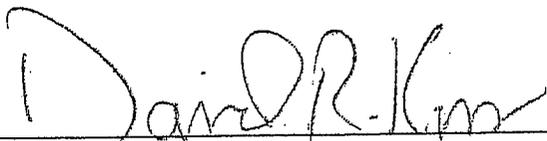
A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found, and prepare a written inventory of the property seized and return this warrant, and the property seized before me or before some other magistrate or court having cognizance of the case.

This search warrant will be served within 7 days from time signed.

  
\_\_\_\_\_  
Detective/Officer/Affiant

  
#19302  
Deputy Prosecutor

Subscribed and sworn before me this 23<sup>rd</sup> day of October, 2002.

  
Judge/Magistrate/Commissioner

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON, )  
)  
Respondent, )  
v. ) NO. 31451-7  
) 02-1-01358-6  
DANNY WAYNE EVANS, ) AFFIDAVIT OF MAILING  
)  
Appellant. )

AUDREY J. GILLIAM, being first duly sworn, on oath deposes and says: That on January 12, 2005, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the following

JOHN A. HAYS  
ATTORNEY AT LAW  
1402 BROADWAY  
LONGVIEW, WA 98632

CLERK, COURT OF APPEALS  
950 BROADWAY, SUITE 300  
TACOMA, WA 98402

FILED  
COURT OF APPEALS  
US JAN 18 AM 9:53  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

each envelope containing a copy of the following documents:

1. BRIEF OF RESPONDENT
2. Affidavit of Mailing.

Audrey J. Gilliam

SUBSCRIBED AND SWORN to before me this January 12, 2005.

Maury A. Denton  
Notary Public in and for the State  
of Washington residing in Cowitz <sup>Clark</sup>  
Co. My commission expires: 5-1-06

