

79712-9

NO. 57210-5-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SCOTT ALAN CHAMBERLIN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Alan R. Hancock, Judge
The Honorable Vickie I. Churchill, Judge
Superior Court Cause No. 05-1-00026-1

BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES

Whether due process, the appearance of fairness doctrine, and Canon 3(D)(1) of the Code of Judicial Conduct is violated when the judge who authorized the search warrant is the judge who was later assigned the resulting criminal case and heard the appellant's CrR 3.6 suppression motion?

Whether the affidavit for search warrant for the defendant's residence contained sufficient information to establish the credibility of Randall Paxton, the identified informant who, against his penal interest, provided very detailed information regarding his drug transaction earlier that same day at the defendant's residence?

Whether Findings of Fact and Conclusions of Law for the stipulated trial prepared, signed by both counsel, presented and entered during the appeal process are insufficient so that the conviction should be vacated?

II. STATEMENT OF THE CASE

The state accepts the statement of the case as presented by the defendant with the following additions or clarifications. On April 15, 2005, the parties appeared before Judge Hancock and the defendant's counsel alerted the court to the defendant's concern regarding the

appearance of fairness because the presiding judge had authorized the issuance of the search warrant that was the subject of the suppression hearing. 1RP 3-4. The court responded that it did not think it was appropriate for the judge to step down on a suppression motion just because the judge also issued the warrant. 1RP 5. The court further stated:

“We judges are required to compartmentalize the issues before us, and we do so, and I’m fully capable of doing that.

If, indeed, I issued the warrant in this case, I’m sure that I did read carefully the application for the warrant, sworn testimony in support of the warrant, issued the warrant. I don’t remember it at this moment because I haven’t had a chance to go through the file, and I also believe I would be capable of fairly and impartially hearing any motion to suppress despite the fact that I issued the warrant. If there are issues the Court did not address or failed to take into account in issuing the warrant, then the Court was wrong and will suppress the evidence.

On the other hand, if the Court doesn’t agree that the motion is well taken, then the Court would deny the motion to suppress. It’s something that I’ve done before, and I believe I’m fully capable of doing again; that is to stay, fully and fairly and impartially considering the motion to suppress.”

1RP 5.

On May 23, 2005 the Court continued the hearing on the motion to suppress so that council could do further research on the issue of whether the court should hear the motion. At that time, the Court noted that it had not made a discretionary decision in the case so “the defendant may file an

affidavit of prejudice as a matter of right.” 2RP 5. The Court proceeded to ask whether the defendant wished to file an affidavit of prejudice. Defendant’s council requested time to consult his client. 2RP 5. The defendant never elected to file an affidavit of prejudice.

III. ARGUMENT

A. **JUDGE HANCOCK WHO AUTHORIZED THE SEARCH WARRANT CORRECTLY DENIED THE DEFENDANT’S MOTION FOR RECUSAL BECAUSE NEITHER THE DEFENDANT NOR THE COURT INDICATED ANY PERSONAL BIAS OR PREJUDICE AND FURTHER, THE DEFENDANT DECLINED TO AFFIDAVIT JUDGE HANCOCK.**

A person accused of a crime has the right to an unbiased judge and due process of law and that the appearance of fairness is critical to due process. Const. art. 1sec. 3; U.S. Const.amends 5, 14. *In re Murchinson*, 349 U.S. 133, 99 L.Ed. 942, 55 S.Ct. 623 (1955); *State v. Cozza*, 71 Wn.App. 252, 255, 858 P.2d 270 (1993). Due process, the appearance of fairness doctrine and Canon 3(D)(1) of the Code of Judicial Conduct (CJC) require disqualification of the judge if he or she is biased against a party or his or her impartiality may reasonably be questioned. *State v. Dominguez*, 81 Wn.App. 325, 328, 914 P.2d 141 (1996). The defendant’s analysis would require superior court judges in this state to recuse

themselves from further involvement in a case solely because they have presided over a preliminary matter. In effect, the defendant's argument ignores the requirement that evidence of actual or potential bias must be shown. A reasonably prudent and disinterested person would not question a court's impartiality just on the basis that the court had authorized the issuance of a search warrant.

1. *Judge Hancock did not violate Due Process, the appearance of fairness doctrine or Canon 3(D)(1) of the Code of Judicial Conduct when he declined to recuse himself on a motion to suppress based on his authorization of a search warrant.*

To prevail under due process, the appearance of fairness doctrine or Canon (D)(1) of the Code of Judicial Conduct a party must present evidence of actual or potential bias or prejudice. *State v. Dominguez*, 81 Wn.App. at 328, 329. *State v. Dugan*, 96 Wn.App. 346, 354, 979 P.2d 885 (1999) (citing *State v. Post*, 118 Wn.2d. 596, 619 n.9, 826 P.2d 172, 837 P.2d 599 (1992)). The defendant argues that courts in other jurisdictions have found that potential bias is inherent in the situation where a judge hears a motion or a trial in which the judge has already made a preliminary decision citing *Brent v. State*, 929 So.2d 952 (Miss.App. 2006), *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989), and *Rice v. McKenzie*, 581 F.2d 1114, 1116-17 (4th Cir. 1978). All of those cases

are distinguishable because all of the judges in those cases acted in one judicial capacity during the preliminary hearing and in a different judicial capacity in the second hearing.

For example in *Brent v. State*, 929 So.2d at 955, the judge reviewed a search warrant as a County Court Judge and then later, as a County Circuit Court Judge presided as the trial court judge. In *Russell v. Lane* 890 F.2d at 947, the judge sat on the state appellate panel that affirmed the petitioner's conviction and then heard the petitioner's habeas petition as a district court judge. In *Rice v. McKenzie*, 581 F.2d at 1115, the judge first participated in the West Virginia Supreme Court's rejection of the defendant's claims and then as a district court judge heard the defendant's habeas petition.

In all of these cases, the judge performed roles in two different courts and in two different capacities on the same cases. Under those circumstances, there is an appearance of fairness issue. In this case, Judge Hancock was acting only as a superior court judge when he authorized the bench warrant and when he later heard the motion to suppress. It is the regular duty of superior court judges to both authorize search warrants and to hear motions to suppress. See CrR 2.3; CrR 3.6. The job of a superior court judge is to handle a wide range of hearings, often on the same case, impartially.

In *Russell v. Lane*, 890 F.2d at 948, the court was discussing the various statutory bases to recuse a judge. The court noted that an alternative possibility is 28 U.S.C. section 455(a), which requires a judge to recuse himself “in any proceeding in which his impartiality might reasonably be questioned.” The court stated, the “fact that a judge is asked to reconsider a previous ruling does not provide a reasonable basis for questioning his impartiality”. *Id.*

The defendant’s argument is tantamount to a per se rule against a superior court judge presiding over one preliminary matter and then any other subsequent matter in the case. As Judge Hancock pointed out, he is asked upon occasion, to reconsider a decision. 2RP 6. Under the defendant’s argument it would be a violation of the appearance of fairness doctrine for the court to hear a motion to reconsider its own ruling. The simple act of a superior court judge authorizing a warrant and then conducting the subsequent suppression hearing does not raise a question of actual or potential bias.

2. *Judge Hancock did not show any actual bias nor had any actual bias against the defendant.*

As noted above, to prevail on this issue the defendant must provide some evidence of the judge’s actual or potential bias. *State v. Dominguez*, 81 Wn.App. at 328, 329. *State v. Dugan*, 96 Wn.App. at 354 (citing *State*

v. Post, 118 Wn.2d. 596, 619 n.9, 826 P.2d 172, 837 P.2d 599 (1992)). The defendant's only claim to any indication of actual or potential bias was Judge Hancock's statement, taken out of context, that he was sure he had read carefully the application for the warrant and the sworn testimony in support of the warrant. IRP 5. This statement is not a statement indicating any type of bias. Rather, it is an indication of the manner in which the judge does his job.

At the time he made this statement he was not even sure he had issued the warrant. *Id.* He went on immediately to state that he would be capable of fairly and impartially hearing any motion to suppress despite the fact he authorized the warrant. He noted that if he did not address an issue or failed to take into account an issue when authorizing the warrant, then he would suppress the evidence. *Id.* On the other hand, if he found that there were no such issues, he would deny the motion to suppress. *Id.* When read in context, his statement was a statement of impartiality not of bias.

There is no evidence in the record that Judge Hancock was actually or potentially biased against the defendant. That conclusion is best demonstrated by the fact that the defendant did not file an affidavit of prejudice against the judge despite being invited by the judge to do so. The defendant's argument that the court violated due process, the

appearance of fairness doctrine or CJC 3(D)(1) fails because he did not provide this court with any evidence of Judge Hancock's actual or potential bias.

B. THE AFFIDAVIT FOR THE SEARCH WARRANT OF THE DEFENDANT'S RESIDENCE PROVIDED SUFFICIENT UNDERLYING FACTS FROM WHICH A MAGISTRATE COULD AND DID CONCLUDE THAT RANDAL PAXTON, THE IDENTIFIED INFORMANT, WAS RELIABLE.

As noted by the defendant, a search warrant must be based upon probable cause. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Great deference is given to the issuing court's determination of probable cause. "A warrant is valid if a reasonable, prudent person would understand from the facts contained in the officer's affidavit that a crime has been committed and that evidence of that crime is located at the place to be searched; as long as the basic requirements are met, affidavits should be viewed in a commonsense, not hypertechnical manner; doubts should be resolved in favor of the warrant." *State v. Wible*, 113 Wn.App. 18, 21-22, 51 P.3d 830 (2002) citing *State v. Garcia*, 63 Wn.App. 868, 871, 824 P.2d 1220 (1992).

An affidavit for search warrant must set forth the underlying facts so that the court can independently assess the evidence. When probable

cause for the warrant is based upon information provided by an informant, the affidavit must satisfy the requirements of *Aguilar-Spinelli*¹ by establishing that the informant is “probably trustworthy” and has personal knowledge of the facts presented in the affidavit. *State v. Merkt*, 124 Wn.App. 607, 613, 102 P.3d 828 (2004). *See also State v. Jackson*, 102 Wn.2d 432, 433, 688 P.2d 136 (1984).

The defendant does not argue that the affidavit fails to meet the personal knowledge prong of the test set forth above. Rather, he argues that the information in the affidavit fails to establish that Randall Paxton was “probably trustworthy”. The defendant’s argument is not persuasive. The affidavit does establish that Mr. Paxton was “probably trustworthy”. The court did not rely on any one factor to determine that Mr. Paxton was reliable. Rather, the court relied on a combination of factors detailed in the affidavit to determine that the affidavit met the credibility prong of *Aguilar-Spinelli*. Mr. Paxton was named as the informant. The statement provided by Mr. Paxton was against his penal interests. Finally, Mr. Paxton’s statement was so detailed that the very details provide an intrinsic indicia of his reliability.

¹ *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d. 723 (1964).

1. Randall Paxton was a named citizen informant.

As the defendant indicated in his brief, a named citizen informant is subject to a more relaxed credibility requirement. *State v. Northness*, 20 Wn.App. 551, 557, 582 P.2d 546 (1978). That an informant is named is one fact the court considers in determining the sufficiency of an affidavit of probable cause. *State v. Merkt* at 614, 102 P.3d 828, *State v. Wible* at 24, 51 P.3d 830 and *State v. Duncan*, 81 Wn.App.70, 78, 912 P.2d 1090 (1996). In this case, Mr. Paxton's willingness to come forward, and even testify, weighs heavily toward the reliability of the information he provided.

The defendant argues that Randall Paxton was not a citizen informant because he was involved in the very criminal activity that he described to the officers. In addition, the defendant argues that since Paxton initially requested leniency in exchange for providing the information, he was motivated by self interest. The defendant's argument fails because it confuses two different categories of informants, those known to the police but not identified to the magistrate and those who were identified to the magistrate.

In *State v. Northness*, 20 Wn.App. 551, 555, 582 P.2d 546 (1978), the court identified four different categories of informants. The first

category was those informants who remain wholly anonymous. The second category was those informants known to the police but not revealed to the magistrate. The court noted that, “Different rules for establishing credibility must be applied, depending upon whether the informant is (1) a ‘criminal’ or professional informant, or (2) a private citizen.” The third category was those informants who were identified and disclosed to the magistrate. The fourth category was those informants who were eyewitnesses to crimes with exigencies such that ascertainment of the identity and background of the informants would be unreasonable.

In *Northness*, the informant was the housemate of one of the suspects and reported that she found marijuana in their apartment. The police named her in the affidavit for probable cause. The court concluded that the informant was a category 3 informant. *Id.* at 555. The court noted that the very fact that the informant was identified not only to the police but also to the magistrate was a distinction that was a valid reason for relaxing the rule requiring independent evidence of credibility for purposes of satisfying the *Aguilar-Spinelli* test. *Id.* at 556.

One of the differences between category 2 informants who are known to the police but not identified for the magistrate and category 3 informants who are named in the affidavit, is that for category 3

informants there is no distinction between types of informants. On the other hand, category two informants are divided into criminal or professional informants and citizen informants. The *Northness* court stated, “the fact that an identified eyewitness informant may also be under suspicion in this case because of her initial contact has been held not to vitiate the inference of reliability raised by the detailed nature of the information and the disclosure of the informant’s identity.” 20 Wn. App. at 558, 582 P.2d 546 (1978) (citing *United States v. Banks*, 539 F.2d 14, 17 (9th Cir. 1975) (fact that named, untested, non-professional informer was under investigation based on suspicion of being involved in drug traffic was immaterial to question of reliability of informant where he voluntarily provided detailed eyewitness report of defendant’s drug dealing); *United States v. Darensbourg*, 520 F.2d 985, 988 (5th Cir. 1975)(affidavit providing name, age and address of informant and detailed information about evidence of crime, sufficient to demonstrate reliability); and *United States v. Rueda*, 549 F.2d 865, 869 2d Cir. 1977)(no need to show past reliability where informant is in fact a participant in the very crime at issue)).

Mr. Paxton is also a category 3 informant. He not only agreed to provide information, he agreed to be named as the informant and to testify

against the defendant. He is not a category 2 informant. The fact that he was involved in criminal activity, like the informants in *State v. Northness*, *United States v. Banks*, *United States v. Darensbourg*, and *United States v. Rueda*, does not vitiate the inference of reliability that results from disclosure of his identity.

2. *Mr. Paxton provided the information against his penal interest.*

It is well settled in Washington that an admission against penal interest is a relevant factor in probable cause determinations under the *Aguilar-Spinelli* test. *State v. Lair*, 95 Wn.2d 706, 711, 630 P.2d 427 (1981); *State v. Patterson*, 37 Wn.App. 275, 679 P.2d 416 (1984). Furthermore, such admissions are relevant indicia of an informant's veracity. *State v. Hett*, 31 Wn.App. 849, 852, 644 P.2d 1187, *rev. denied*, 97 Wn.2d 1027 (1982); *State v. Lair*, *supra*, 95 Wn.2d at 710-11, 630 P.2d 427; *United States v. Harris*, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971)

The defendant argues that the basis for this rule is that those given leniency for information have a strong motive to be truthful. The implication of the defendant's argument is that without such an agreement, a statement against penal interest loses its reliability. This analysis is

incorrect. In *State v. O'Connor*, 39 Wn.App. 113, 122, 692 P. 2d 208 (1984), the court saw no merit in respondents' contention that, absent a leniency arrangement, an informant's statements made while under arrest and against his or her penal interest was not a factor supporting reliability. "A leniency agreement may well provide an additional incentive to speak truthfully, but this does not mean that an arrest situation by itself has no effect on an informant's incentive to be truthful." Id.

In *State v. Merkt*, 124 Wn.App. at 613, 614, the court found that both informants provided statements against penal interests. The informants in that case voluntarily agreed to talk to the detective in spite of the detective's refusal to make any deals and gave incriminating evidence against the defendant and themselves. *Id.* One of the informants was a convicted felon who contacted the detective offering to provide information in exchange for help on a pending driving under the influence charge. The detective declined to make any deals. The informant told the detective he was a drug user tired of the effect the drugs were having on his life. He then told the detective about the defendant's residence and that the defendant had sold "dope" out of that residence. The informant told the detective that he had been given methamphetamine from the

defendant at that location. He provided other related details. *Id.* at 830 and 831.

The two informants in *Merkt*, like Mr. Paxton, were interested in providing information in exchange for consideration regarding pending charges. Further, in both cases no promises were made regarding such consideration. One of the informants in *Merkt* and Mr. Paxton provided information for similar reasons. One because he was tired of the effect the drugs were having on his life, and the other because he wanted to stop using drugs. The trial court's determination that the affidavit for search warrant met the credibility prong of the *Aguilar-Spinelli* test is supported by the fact that Mr. Paxton, like the defendants in *Merkt*, *Hett*, and *Lair*, was a named informant and provided information against his penal interest

3. *The informant provided a very detailed description of his purchase of methamphetamine from the defendant's residence.*

To determine the probable reliability of an informant's information the court can look at the information provided itself.

The intrinsic indicia of the informant's reliability may be found in his detailed description of the underlying circumstances of the crime observed or about which he had knowledge. If the underlying circumstances are sufficiently detailed to satisfy the first prong of *Aguilar-Spinelli*, they may themselves

provide built in credibility guides to the informant's reliability.... The detailed information encompassed in the affidavit's internal content attests to the informant's reliability by its very specificity; no independent corroboration is required.

State v. Wible 113 Wn.App. at 24, 51 P.3d 830 *citing State v. Northness*, 20 Wn.App. at 557-58, 582 P.2d 546 (internal quotations and citations omitted).

Randall Paxton's statement, as restated in the affidavit for search warrant, is very detailed. He described the residence of the defendant. This information was independently confirmed by Deputy Todd. Mr. Paxton stated that he went to the defendant's residence earlier that afternoon and purchased 1.75 grams of methamphetamine. He described the purchase of this methamphetamine in great detail including where the methamphetamine was stored and an estimate of the amount of methamphetamine held by the defendant prior to the sale. He then went on to say that he left the residence and ingested the methamphetamine, and later returned to the defendant's residence where he was given some marijuana.

He provided an estimate of the amount of marijuana he saw in the defendant's possession. The fact that the defendant was selling drugs was consistent with information previously developed by Deputy Todd. The affidavit provided the court with sufficient detail as to the information

provided by Mr. Paxton as to establish his credibility and the reliability of the information he was providing.

This is not a case where the court relied on only one factor to determine that the credibility prong of the *Aguilar-Spinelli* test. Rather, the court considered that Randall Paxton was a named informant, that the information he provided was against his penal interest and that the information was very detailed. Any one of these factors could be considered sufficient to satisfy the test for the credibility prong. The court did not abuse its discretion by finding that both prongs of the *Aguilar-Spinelli* test were met and that there was probable cause to issue the search warrant.

C. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE STIPULATED TRIAL HAVE BEEN ENTERED. THEREFORE, THE CONVICTION SHOULD NOT BE VACATED WHEN THE ISSUES ON APPEAL SURROUND THE PRETRIAL SUPPRESSION MOTION AND ARE NOT RELATED TO THE COURT'S FINDINGS OR CONCLUSIONS DURING THE STIPULATED TRIAL.

As predicted the state did in fact prepare and present findings of fact and conclusions of law to the trial court. The trial court entered findings of fact and conclusions of law on July 28, 2006. The findings of fact and conclusions of law were reviewed and signed by trial counsel for both the defendant and the state. Supp. CP ____; see also Exhibit A

attached hereto. Given the fact that the defendant's other issues on appeal are all related to the suppression hearing held prior to the stipulated trial, it is difficult to imagine how these findings of fact and conclusions of law would be unfairly tailored in response to the appeal. Since these findings of fact and conclusions of law have been entered and filed and do not impact the other issues on appeal, there is no basis to vacate the conviction.

IV. CONCLUSION

Judge Hancock acted appropriately in denying the defendant's motions to recuse himself and to suppress evidence. Further, the trial court has now entered findings of facts and conclusions of law in compliance with CrR 6.1(d). Therefore the State respectfully asks this court to affirm the defendant's conviction.

Respectfully submitted this 31st day of July, 2006.

GREGORY M. BANKS
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WSBA # 20432, OIN 91047

EXHIBIT A

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JUL 28 2006

SHARON FRANZEN
ISLAND COUNTY CLERK

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

SCOTT ALAN CHAMBERLIN,

Defendant.

NO. 05-1-00026-1

FINDINGS OF FACT AND CONCLUSIONS OF
LAW

THIS MATTER came before the court on October 7, 2005, for a stipulated bench trial. The defendant was present with counsel James Brunell. The court having reviewed the stipulated facts and having heard the arguments of counsel makes the following:

I. FINDINGS OF FACT

1. On January 20, 2005 in Island County, Washington, at around 8:00 pm Deputy Dan Todd of the Island County Sheriff's Office arrested Randall L. Paxton for Driving Under the Influence, Attempting to Elude a Police Officer, and Reckless Driving. Mr. Paxton admitted to Deputy Todd that he was under the influence of methamphetamines and marijuana which he had purchased from Scott A. Chamberlin at his home at 5305 April Drive, Langley, Washington. Mr. Paxton provided the Island County Sheriff's Office with a taped statement as to how Mr. Chamberlin sold him methamphetamine and gave him marijuana which Mr. Chamberlin had gotten out of a black duffel bag which had been on the coffee table.

2. Based upon the information provided by Mr. Paxton, at approximately 2:00 am on January 21, 2005, the Island County Sheriff's Office obtained a search warrant for Mr.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Coupeville, Washington 98239
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1 Chamberlin's Island County residence at 5305 April Drive, Langley, Washington. At 3:30 am
2 the search warrant was served at that address.

3
4 3. When the search warrant was served, the Island County Sheriff's deputies found
5 the defendant and Yvonne Nicolich in an upstairs bedroom. No one else was found in the
6 residence. Mr. Chamberlin was provided a copy of the search warrant and read his Miranda
7 Rights which he indicated he understood and waived.

8 4. Mr. Chamberlin told the deputies that there was methamphetamine in a bag under
9 their bed upstairs.

10 5. The black bag described by Mr. Paxton was under the bed in the upstairs bedroom
11 and contained methamphetamine, marijuana, a digital scale and drug paraphernalia. Also located
12 inside this black bag was a wallet with Mr. Chamberlin's license and \$1,803 in United States
13 currency inside.

14 6. A safe, with the key still in the lock, in a storage area adjacent to the bedroom
15 contained two large bags of marijuana, numerous items of women's clothing and a Beretta .380
16 caliber handgun.

17
18 7. All the evidence described above was photographed by Commander Beech of the
19 Island County Sheriff's Office prior to it being completely searched or recovered. The items of
20 evidence were marked, tagged and placed into the rear of Commander Beech's vehicle. The
21 Island County Sheriff's deputies left the residence at approximately 5:36 am. They returned to
22 the Island County Sheriff's Office in Coupeville, Washington. Detective Cecil E. Wallace, Jr.
23 performed a presumptive NIK brand test on the suspected methamphetamine and received a
24 positive result. Commander Beech photographed the methamphetamine along with the positive
25 result test kit. All items were sealed and placed into evidence. The photographs taken by
26 Commander Beech were downloaded off of his camera and placed by Commander Beech on a
27 CD-Rom which was also placed into evidence.

28 8. On August 8, 2005, Daniel R. Van Wyk, a forensic scientist with the Marysville
29 Washington State Patrol crime laboratory signed an affidavit that he had tested some of the
30

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Page 2 of 4

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Coupeville, Washington 98239
360-679-7363

1 substance which was suspected to be methamphetamine taken from the residence at 5305 April
2 Drive, Langley, Washington on the morning of January 21, 2005 and determined that it did,
3 indeed, contain methamphetamine.

4 THEREFORE, the court enters the following:

5
6 **II. CONCLUSIONS OF LAW**

7 1. The stipulated facts do not establish beyond a reasonable doubt that the defendant,
8 Scott A. Chamberlin, knowingly possessed the marijuana found in his residence at 5305 April
9 Drive, Langley, Washington with the intent to deliver it to another. The amount of marijuana
10 found was consistent with personal use.

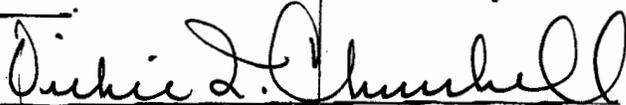
11 2. The defendant, Scott A. Chamberlin, was in possession of the methamphetamine
12 found at his residence in Island County, Washington.

13 3. The defendant, Scott A. Chamberlin, knew the substance in his control at his
14 residence was methamphetamine.

15 4. The defendant, Scott A. Chamberlin did possess the methamphetamine with the
16 intent to deliver the same methamphetamine to other people.

17 5. The defendant, Scott A. Chamberlin is guilty of Possession with Intent to Deliver
18 Methamphetamine.
19

20 Dated 7-28-06

21 
22
23 **JUDGE OF THE SUPERIOR COURT**

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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Presented by:

GREGORY M. BANKS
ISLAND COUNTY PROSECUTING ATTORNEY

By: 
MARGOT L. CARTER
DEPUTY PROSECUTING ATTORNEY
WSBA # 20432, OIN 91047

Approved for Entry/Copy Received:

By: 
JAMES BURNELL, WSBA # 19359
ATTORNEY FOR THE DEFENDANT

FINDINGS OF FACT AND
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COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

SCOTT ALAN CHAMBERLIN,

Defendant/Appellant.

NO. 57210-5-I

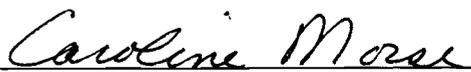
DECLARATION OF SERVICE

I, CAROLINE MORSE, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on the 31st day of July, 2006, a copy of Brief of Respondent, Respondent's Supplemental Designation of Clerk's Exhibits and Declaration of Service was served on the parties designated below by depositing said document in the United States Mail, postage prepaid, addressed as follows:

Eric Broman
Nielsen, Broman & Koch
1908 East Madison
Seattle, WA 98122

Signed in Coupeville, Washington, this 31st day of July, 2006.


CAROLINE MORSE