

Problem: State v. Peter Burke
Moot Court Competition, 2006-07

Statement of Facts

Mr. Burke was arrested on June 16, 2001, in connection with the execution of a search warrant at his residence. The affidavit in support of the warrant was written by Seattle Police Detective James Cooper, an experienced officer in the narcotics unit. The affidavit included information provided by a confidential informant (CI). Earlier that morning, the CI had been arrested for traffic violations and outstanding theft warrants. The CI told the arresting officers that he could direct police to an active clandestine methamphetamine lab in South Park in return for not being booked into jail. The CI was told that if the information proved to be false, he would be booked into jail.

According to the affidavit, the CI was familiar with methamphetamine and methamphetamine labs from over ten years of use and involvement in over ten "cooks" using the Red-P and Lithium methods. He stated that he had been at a South Park residence at 4:00 a.m. that morning and "at that time a 'cook' was started to manufacture methamphetamine." In response to Detective Cooper's questioning, the CI said the "cook" was Christopher Linville, but Mr. Linville did not live there; the owner, "Pete," allowed him to "cook" there in exchange for drugs. The CI gave physical descriptions of both men.

The CI said methamphetamine was being made using the Red Phosphorus (Red-P) method and "they had already conducted their pill wash (the extraction of ephedrine from the cold tablets) at another location." He described the rest of the process, which Detective Cooper, based on his training and experience, stated was an accurate description of the process. The CI said "Chris" cooks two to three times a day at that location, making 1/2 pound of methamphetamine at a time. The CI also stated he had been at that residence on two other "cooks" within the prior week.

The CI showed police the residence, which a record check showed belonged to Mr. Burke, and described Mr. Burke and Mr. Linville's cars. A record check revealed that Mr. Linville had been arrested several times, including four times for violation of the Uniform Controlled Substances Act (VUCSA).

Mr. Linville's car was not at the residence; the CI said Mr. Linville had a room at a nearby hotel. The CI was taken to the hotel to contact "Chris." The hotel occupants called the suspect and told the CI that "Chris" was at "Pete's."

The police and CI went back to the house, and they saw a man the CI identified as Mr. Linville. Police set up surveillance, and while Detective Copper was writing the affidavit for a warrant, Mr. Burke was stopped while driving away from the house. A search warrant was issued for Mr. Burke, Mr. Linville, and the residence. Items consistent with methamphetamine manufacturing were found in the basement of the house, and six grams of methamphetamine was found on Mr. Burke's person.

After Mr. Burke was arrested, Sergeant Barden interviewed him to determine what the police might find when they conducted a search of his house. During this conversation, Sergeant Barden asked Mr. Burke about the layout of his house and about who was in the house. When Sergeant Barden asked Mr. Burke what had been going on at 4:00 a.m. that morning, Mr. Burke stated, "I don't know. I just woke up and there were some people there." Before trial, the State moved to exclude this statement on the grounds that it was self-serving hearsay. In response, Mr. Burke argued that the statement should come in and made a reference to *Washington Practice* and the rule of completeness. The trial court read a case offered by Mr. Burke, distinguished the case on its facts, and granted the State's motion. The trial court did not do a rule of completeness analysis.

At trial, the State presented the following evidence.

- When police asked Mr. Burke if there was a basement in the house, Mr. Burke said no, which was incorrect.
- When the police searched the inside of Mr. Burke's house, they found hydrogen gas generators, gallons of toluene, numerous tablets for extracting pseudoephedrine, glasses filled with bi-layer liquid, a station in the basement set up as a "pill wash" area, an ice chest with ice, Mr. Burke's social security card, mail addressed to Mr. Burke, and a notebook containing names and "\$" symbols.
- Outside the front door of Mr. Burke's house, the police found a garbage can that contained balled-up coffee filters, empty plastic baggies with a reddish residue in them, and miscellaneous containers of Red Devil lye and other types of chemicals. The balled-up coffee filters contained a powdery residue that contained methamphetamine. A forensic scientist testified that the bi-layer liquids and other sediments were tested and contained substances "consistent with manufacturing methamphetamine."
- A neighbor testified that cars were coming and going from the house and that one day she smelled an odor.
- On July 12, 2001, police responded to a call that there was someone in Mr. Burke's house in violation of a court order excluding people from the house. When officers reached the back of the house, they saw Mr. Burke running out of the house. He was taken into custody. During direct examination, Sergeant Koutsky recounted the conversation he had with Mr. Burke. Mr. Burke stated that one and a half years ago he started hanging around with some "fucking whiners," and that "two months ago he was overwhelmed by these people and couldn't handle them." When Sergeant Koutsky asked why he did not kick them out, Mr. Burke said, "I couldn't. There were too many of them. I would wake up and there would be people sleeping in my house I did not know." He stated, "I knew they were cooking, but I was overwhelmed," and "I would get some product, but I was not cooking it."
- During cross-examination, officers who conducted the investigation of Mr. Burke's house confirmed that they did not find a heat source, which is necessary to "cook" methamphetamine. One officer admitted that he assumed the containers found actually contained the substance they were labeled with (*i.e.*, toluene and lye). In addition, officers did not find any of Mr. Burke's fingerprints in the upstairs or downstairs part of the house. Officers also testified that they did not smell anything unusual when they drove by the house.
- Mr. Burke did not present a defense. During closing argument, Mr. Burke argued that there was virtually no evidence that methamphetamine was being manufactured at his house on June 16, 2001. Even though chemicals were found, the scientists and experts who testified did not say this lab was operating recently. The officers did not smell anything unusual and, even though one neighbor testified that "one time" she smelled something distinctive, she could not tell where the odor was coming from.

The State presented a short rebuttal argument, which ended with the following comments:

It's your job to now hold them accountable for their actions and nothing more, just their actions, which were manufacturing methamphetamine. Your job and your duty is to find both Mr. Burke guilty based on the evidence that you have heard in this case. Thank you.

Mr. Burke did not immediately object and move for a mistrial; after the jury was dismissed, the co-defendant moved for a mistrial and Mr. Burke joined in the motion. Neither the co-defendant nor Mr. Burke asked for a curative instruction. The trial court denied the motion.

Procedural History

Mr. Peter Burke was charged with two counts: Manufacturing Methamphetamine and Possession of Methamphetamine. The Court granted the State's motion to exclude as self-serving hearsay one of several statements Mr. Burke made to Sergeant Eric Barden on the day Mr. Burke was arrested. At his jury trial, Mr. Burke did not testify or present any witnesses. The jury found him guilty on both counts. After judgment and sentence were entered, Mr. Burke filed a timely Notice of Appeal.

Issues

This case is set for oral arguments in front of Division I of the Washington State Court of Appeals. There are two issues on appeal:

Issue No. 1

Did the trial court err when it granted the State's motion to exclude Mr. Burke's self-serving statement?

Issue No. 2

Did the trial court err when it denied Mr. Burke's motion for a mistrial based on the State's final statements in closing argument?

Please prepare:

- **A brief not exceeding 12 pages in length, double spaced with 12 point Times New Roman font, and one-inch margins.**
- **An oral argument of no more than 30 minutes in length.**

Briefs will be due to the Moot Court Board lockbox by September 25, 2006 at 5:00 p.m. Oral arguments will take place on October 6th and 7th.

We have provided the names of several cases for you to begin your research with, but it is strongly recommended (and possibly necessary) that you expand your research beyond these sources.

Starter Cases:

State v. Larry, 108 Wn. App. 894, 910, 34 P.3d 241 (Div. II 2001)

State v. Coleman, 74 Wn. App. 835, 876 P.2d 458 (1994)

State v. Powell, 62 Wn. App. 914, 816 P.2d 86 (1991)

State v. Anderson, 112 Wn. App. 828, 837, 51 P.3d 179 (2002)

State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997)