

**Case # 310981**

**Statement of Additional Grounds  
for Review**

**State of Washington**

**v.**

**Christopher Randolph Tate**

FILED

APR 29 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON,  
Respondent,

CHRISTOPHER RANDOLPH TATE  
Appellant.

No. 31098-1-III  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Christopher Randolph Tate, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The Illegal Entry of the Transporting officer who was the one who entered the ~~vehicle~~ automobile without a search warrant, as he exited the car he then told the other officer that he smelled an odor of Marijuana, which then he asked me at the time, I was already in the back seat of the Patrol car. If I would consent to a search, I answered "No!" Remind you that he not only entered illegally he moved the the car also, which I never gave consent to do either. He stated that in his Police Report, this is a violation of my 4<sup>th</sup> + 6<sup>th</sup> amendments Article Section (1, Section 7) United State Const.)

If there are any additional grounds, a brief summary is attached to this statement.

Date: April 24<sup>th</sup>, 2013 Signature: Christopher Tate

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The Honorable Carrie L. Runge  
April 25, 2013  
8:30 am

**FILED**

APR 29 2013

COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
By \_\_\_\_\_

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR BENTON COUNTY

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 Vs. )  
 )  
 CHRISTOPHER R. TATE, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

No. 11-1-00784-1

MOTION TO ~~DISMISS~~ JUDGMENT  
AND SENTENCE PURSUANT TO  
CrR 7.8 (B) AND REVIEW OF THE  
MERITS, PURSUANT TO RAP 7.2 (e)

(CLERK'S ACTION REQUIRED)

I. RELIEF REQUESTED

Christopher R. Tate, defendant pro Se, requests for this action to be modified because under CrR 7.8 (b)(4), the judgment is void, or (5) any other reason justifying relief from the operation of the judgment, postjudgment motions and actions to modify decision.

The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. See RAP 7.2 (e).

## II. STATEMENT OF THE CASE

### Procedural/Substantive Facts

On August 30, 2012 the defendant was sentenced to 55 months in prison for the crime of Unlawful possession of a firearm, notwithstanding that the State did not prove the essential elements of the crime in the information.

The State's theory is that Mr. Tate knew that the bag was in the back of the car and that it contained a weapon.

#### IV. EVIDENCE RELIED UPON

The evidence relied upon are herein the above entitled case, and Exhibits A- \_\_\_\_\_ are attached.

#### V. AUTHORITY

##### 1. Jurisdiction

This court has jurisdiction over this matter, pursuant to CrR 7.8 (b) and RAP 7.2 (e). On motion and upon such terms as are just, the court may relieve a party from a final judgment, in order, or proceeding if the charges are dismissed, judgment is void or any other reason justifying relief from the operation of the judgment. See CrR 7.8 (4) (5). The trial court has the authority to hear and determine, (1) postjudgment motions authorized by the criminal rules and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion action shall first be heard by the trial court, which shall decide the matter. See RAP 7.2 (e).

EXHIBITS

Exhibit A

WASHINGTON STATE PATROL  
REPORT OF INVESTIGATION  
NARRATIVE

Case #  
11-011362

Trooper: Brad Neff

On July 25, 2011 at approximately 2224 hours, I heard Trooper Dave Brandt (#313) stop a vehicle at Yelm and Entiat St in Benton County. Trooper Brandt ran a driver's check and it came back with two felony warrants. I responded to the scene and assisted Trooper Brandt getting Christopher R. Tate in custody.

Trooper Brandt had Mr. Tate in the back seat of his patrol car and asked Mr. Tate if he wanted to waive the vehicle or if he wanted it towed. Mr. Tate advised just leave it here. Trooper Brandt told Mr. Tate we could not leave it here because it was in the roadway, however we could move it to the church parking lot and get it off the roadway. Mr. Tate agreed, but advised he wanted to watch. I hopped in the car and moved it to the church parking lot. When I was in the vehicle, I detected what was recognized to me through experience and training as an odor of marihuana inside the vehicle. I had not detected an odor of marihuana as I was standing next to Mr. Tate while outside the vehicle.

I told Trooper Brandt I detected an odor of marihuana coming from inside the vehicle. I had left the driver's door open when I exited and Trooper Brandt advised he could smell it too. Trooper Brandt went back over to his car and asked Mr. Tate about the odor of marihuana. Mr. Tate denied any marihuana in the car. Trooper Brandt advised Mr. Tate his constitutional rights which he understood. Trooper Brandt asked if he could have consent to search his car. Mr. Tate advised no. Mr. Tate advised there was a gun in a bag that was not his. He advised somebody else left it in the car and he looked inside and realized there was a gun in the bag. Mr. Tate advised there was a small bag of bud behind the driver's seat and he would get it himself. Trooper Brandt asked again if he would complete a consent to search form to look in his car. Mr. Tate did not want to.

I spoke to Trooper Brandt and he decided to attempt to obtain a search warrant. I told Trooper Brandt I could take Mr. Tate to Benton County jail since he was complaining about being in the back seat of the patrol car. I transported Mr. Tate to the Benton County jail where he was booked on the warrants.

When I cleared the jail, I assisted Pasco PD with a pursuit in Kennewick then responded back to the scene with Trooper Brandt. I notice Trooper Brandt had recovered a revolver, and some drugs and some paraphernalia. Trooper Brandt noticed a left rear wing window that had been broken out and was concerned about leaving the car in the parking lot unsecured. Trooper Brandt called the next rotational tow. I completed the impound form and gave it to Trooper Brandt.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED Brad Neff BADGE # 617 DATED 7-26-11 LOCATION BENTON COUNTY

### III. ISSUE PRESENTED

A COURT MAY ISSUE A SEARCH WARRANT ONLY UPON A DETERMINATION OF PROBABLE CAUSE. DID THE COURT ERR, AND ABUSE ITS DISCRETION WHEN IT ISSUED A SEARCH WARRANT, BASED ON THE REPORT OF THE OFFICER WHO ILLEGALLY MOVED THE VEHICLE, STATED THE INTERIOR OF THE VEHICLE HAS A STRONG ODOR OF MARIJUANA EMITTING FROM IT, IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL RIGHTS AFFORDED HIM?



## VI ARGUMENT

A COURT MAY ISSUE A SEARCH WARRANT ONLY UPON DETERMINATION OF PROBABLE CAUSE. THE COURT ERRED AND ABUSED ITS DISCRETION WHEN IT ISSUED A SEARCH WARRANT BASED ON THE REPORT OF THE OFFICER, WHO ILLEGALLY MOVED THE VEHICLE AND STATED THE INTERIOR OF THE VEHICLE HAS A STRONG ODOR OF MARIJUANA EMITTING FROM IT, IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL RIGHTS AFFORDED HIM.

The United States Constitution Amendment <sup>Four</sup> ~~Six~~ and Wash. Const. Art. 1 sec. 7 says that a court may issue a search warrant only upon a determination of probable cause. Probable cause requires a nexus between the criminal activity and the item police want to seize. Probable cause also requires a nexus between the item sought and the place the police want to search. Accordingly, an affidavit supporting a search warrant must contain facts from which the court can infer that the item is probably evidence of a crime and that the police will probably find that item in the place they seek to search.

In the present case, there was no nexus proven between the criminal activity and the item police want to seize. There must also be a nexus between the item sought and where the police want to search for probable cause to exist.

Here Mr. Tate was stopped for speeding, a traffic infraction, during a running of his name through WSP Communications, the defendant came back with having felony warrants which was the basis of the arrest. There was no criminal activity to warrant probable cause. When Mr. Tate was in the back seat of the patrol car, Trooper Brant asked him if he wanted to waive the vehicle or if he wanted it towed. Mr. Tate said leave it here. The trooper said we can't leave it here because it is in the roadway. (Exhibit A) When Mr. Tate said leave it here, the trooper should have towed the vehicle, which is his right. RCW 46.55.113(a)(D) allows for it. Also police are justified in impounding a vehicle when there are no reasonable alternatives. See State v. Hardman, 17 Wn. App. 910, 914, 567 P.2d 233 (1977). When the defendant told him, just leave it here, the only reasonable alternative was to tow the vehicle. Mr. Tate did not give permission for the officer to enter the vehicle, so when the trooper entered the vehicle, any search or seizure

would be illegal.

The trooper stated when he exited the car that there was a strong odor of marijuana emitting from it and ask if he could search the vehicle. Mr. Tate said no and was transported to the Benton County Jail. Trooper called and got a warrant base on probable cause of "strong odor of marijuana emitting from the car". This was a violation of Wash. Const. Art. 1 sec. 7. This article say that a strong odor of marijuana emitting from a vehicle is not enough to get a warrant. Although the automobile exception to the search warrant requirement, which allows for a warrantless search of a vehicle when there is probable cause to believe the vehicle contains evidence of criminal activity is recognized for the purposes of 4<sup>th</sup> Amendment, it is not recognized under the Washington State Constitution is prohibition against disturbance of private affairs or invasion of home without authority of law. RCW Const. Art. 1 sec. 7. The privacy protection provided by Art. 1, sec. 7 is greater than that of the Fourth Amendment to the United States Constitution. State v. O'Reill, 143 Wn.2d 564, 584, 62 P.3d 489 (2003). Under Art. 1 sec. 7, warrantless searches and seizure are presumed unreasonable unless one of the narrow, "jealously-guarded" exceptions applies. State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996).

"The State bears the burden of showing a seizure without a warrant falls within one of these exceptions." State v. Kinzy, 141 Wn.2d 373, 384, 5 P.3d 668 (2000). Also in Arizona v. Gant, 173 it says search incident to arrest is proper under the fourth Amendment to the United States Constitution, when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search or when it is reasonable to believe evidence relevant to the crime might be found in the vehicle.

This was a traffic infraction with the defendant having warrants. Not a crime in which a trooper would believe evidence of a crime would be found. Any evidence acquired solely through the exploitation of information obtained from an illegal search, may not be used against Mr. Tate. Wong Sun v. United States 371 U.S. 471, 9 L.Ed.2d 441, 83 S.Ct 407 (1963). The search warrant pursuant to which Mr. Tate's car was searched was procured entirely on the basis of information obtained during an illegal search and a tainted search warrant. Mr. Tate was convicted on the strength of evidence gathered as the fruit of unlawful police conduct. Without that evidence no case could be established.

## VII Time Bar

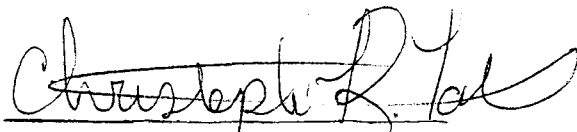
This brief fits the exceptions to the one year time limitation pursuant to RCW 10.73.100(a), (3)

## VIII Conclusion

Mr. Tate moves this Honorable Court to grant his relief and reverse the conviction and dismiss the charges.

DATED this 22 day of March, 2013.

Respectfully submitted,

  
Christopher R. Tate

SUPERIOR COURT OF WASHINGTON  
FOR BENTON COUNTY

STATE OF WASHINGTON, )  
Respondent, ) No. 11-1-00784-1  
Vs. ) AFFIDAVIT OF THE DEFENDANT  
CHRISTOPHER R. TATE, ) CHRISTOPHER R. TATE  
Defendant. )  
\_\_\_\_\_ )

STATE OF WASHINGTON )  
 )...  
COUNTY OF Franklin )

I Christopher R Tate, am over the age of eighteen and deposes and says:

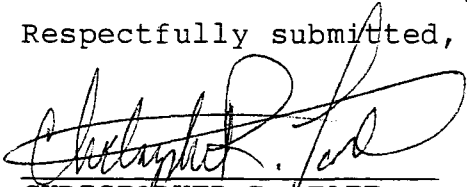
1. I am currently incarcerated at the Coyote Ridge Corrections Center, 1301 N. Ephrata Ave. PO Box 769,, Connell, Washington 99326.
2. I was given 55 months in prison and no community custody.
3. That I was convicted of the Crime of Unlawful Possession of a Firearm and that I was acquitted of the crime of Possession of a Controlled Substance
4. That pursuant to the Holdings in State v. Schelin, 147 Wn.2d 562, 575-76, 55 P.3d 632 (2002), A nexus must be proven between the defendant, the crime and the weapon, to make the corpus delicti for a Unlawful possession of a firearm to exist. It says that showing that a weapon was accessible during a crime does not necessarily show a nexus between the crime and the weapon. [T]he mere presence of a weapon at a crime scene may be insufficient to establish a nexus between a crime and a weapon. Schelin 147 Wn.2d at 570. Likewise [s]imply constructively possessioning a weapon on the premises sometime during the entire period of illegal activity is not enough to establish a nexus between the crime and the weapon. Schelin, 147 Wn.2d at 570 (quoting State v. Johnson, 94 Wn.App. 882, 895 974 P.2d 855 [162 Wn.2d 433] (1999)).

5. That I never possessed the weapon, actually or constructively.
6. That the State did not meet the corpus delecti to even charge me with the crime, when the weapon that they did find was not easily accessible or readily available for use in the offense or defense.
7. That the chares against me should be dismissed for the essential elements were not proven beyond a reasonable doubt.
8. That the ends of justice be served.


I declare under the penalty of perjury for the laws of the State of Washington, that the foregoing is true and correct.

DATED THIS 22 day of March, 2013.

Respectfully submitted,

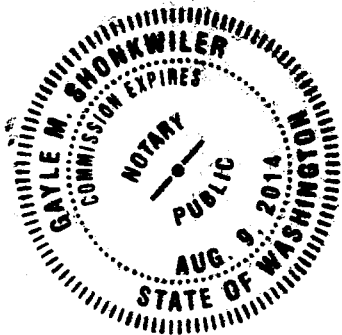
  
CHRISTOPHER R. TATE

SUBSCRIBED AND SWORN TO before me

  
A Notary Public in and for the  
State of Washington

Who resides in Grant County

My Commission expires: 8-9-2014



**FILED**

APR 29 2013

COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
By \_\_\_\_\_

Appellant COURT  
STATE OF WASHINGTON

State of Washington  
Petitioner

Case No. 31098-1-III

Christopher Randolph Tate  
v.  
Defendant

DECLARATION OF MAILING

I, Christopher R. Tate [ name ], declare that, on April 24<sup>th</sup> [ date ], I  
2013  
deposited the foregoing [ list document/s ]:

A small brief of my additional statement grounds  
and things that I feel should be raised also.

or a copy thereof, in the internal mail system of

Coyote Ridge Correction Center, Connell, WA, 99326 [ name of institution ]

and made arrangements for postage, addressed to each of the following:

Court of Appeals North 500  
Leader St. Spokane Washington  
99201

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Connell, Washington [ city, STATE ]

on this 24<sup>th</sup> day of April, 20 13

Christopher Tate  
[ signature ]