97860-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN LAURICELLA,
Appellant,
vs.

STATE OF WASHINGTON,
Respondent.

PETITION FOR DISCRETIONARY REVIEW

ON APPEAL FROM DIVISION III Court of Appeals No. 36128-4-III
And STEVENS COUNTY SUPERIOR COURT

JOHN LAURICELLA DOC 408516
WASHINGTON STATE PENITENTIARY
1313 N. 13th Avenue
Walla Walla, Washington 99362

TABLE OF CITATIONS

1. THE LOWER COURT'S APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW WAS NOT DISTINGUISHED WITH THE FACTS AND MERITS OF JOHN LAURICELLA'S CASE, THUS, THE LOWER COURT COMMITTED PROBABLE ERROR BY APPLYING THE FACTS TO THE U.S. & WA. STATE AUTHORITY AND PRESENTS A SIGNIFICANT QUESTION OF LAW UNDER THE United Sates CONSTITUTION AND State of Washington CONSTITUTION. **RAP 13.4(b)(1-4).**

   (a) The COA OP. at page 5, correctly identifies the applicable Supreme Court precedent and the standards in that precedent, but applies them unreasonably to the facts of the case.

2. THE SUPREME COURT SHOULD ACCEPT REVIEW OF SIGNIFICANT CONSTITUTIONAL AND NO-CONSTITUTIONAL ISSUES THAT ARE OF SUBSTANTIAL PUBLIC INTEREST AND SHOULD BE DETERMINED BY THE SUPREME COURT. **RAP 13.4(b)(3)&(4).**

STATE COURT DECISION

& **State v. Salinas**, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

U.S. SUPREME COURT AUTHORITY

Chapman v. California, 386 U.S. 18, at 23 (1967)

Gunn v. Ignacio, 263 F.3d 965, 970 (2001)

Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Edn2d 560 (1979)

Mapp V. Ohio, 367 U.S. 643 (1961)

Miranda v Arizona, 384 U.S. 436 (1966)

Taylor v. Alabama, 457 U.S. 687, 690, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982).

United States v. Cronic 466 U.S. 648, 656, 104 S.Ct. 2039, 80 nL.Ed.2d 657 (1984)

United States v. Williams, 615 F.3d 657, 668-669 (6th Cir. 2010)

Wong Sun v. United States, 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

U.S. Const. Amend. IV

TABLE OF CITATIONS CONTINUED:

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN LAURICELLA, Appellate, v. STATE OF WASHINGTON, Respondent	No. _____ COA# 36128-4-III PETITION FOR DISCRETIONARY REVIEW

I, JOHN LAURICELLA, Appellate, pro-se, Petitioner/Appellant and hereby ask this Court to Review the decision of the Court of Appeals terminating review **RAP 16.4(a)(b)-(1),(3)(4).**

ARGUMENT

1. THE LOWER COURT'S APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW WAS NOT DISTINGUISHED WITH THE FACTS AND MERITS OF JOHN LAURICELLA'S CASE, THUS, THE LOWER COURT COMMITTED PROBABLE ERROR BY APPLYING THE FACTS TO THE U.S. & WA. STATE AUTHORITY AND PRESENTS A SIGNIFICANT QUESTION OF LAW UNDER THE United Sates CONSTITUTION AND State of Washington CONSTITUTION. **RAP 13.4(b)(1-4).**

(a) The COA OP. at page 5, correctly identifies the applicable Supreme Court precedent and the standards in that precedent, but applies them unreasonably to the facts of the case.

The COA cites in the Sufficient evidence to prove each element of the charged offense beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Edn2d 560 (1979) & **State v. Salinas**, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Review should be granted because the factfinding procedure used to find a firearm was used in the commission of a crime. There is no evidence that JOHN LAURICELLA, threatened anyone with a weapon. I ask the Court to note the plain error of JOHN LAURICELLA, was never **Mirandaized** [**Miranda v Arizona**, 384 U.S. 436 (1966)], though it is not a Issue properly before this Court in should be noted. JOHN LAURICELLA, was detained and the evidence used for the Sufficiency to prove each and every element was tainted. The Record as a whole proves this.

Stated in the standard as follows: "We read the 'unreasonable determination of the facts' criterion to require 'more than mere incorrectness,' such that the state court's finding is so clearly erroneous' as to leave us with a 'firm conviction' that its determination was mistaken on evidence before it. **Gunn v. Ignacio**, 263 F.3d 965, 970 (2001).

The Appellate Attorney may have overlooked this as well as not challenging the facts surrounding JOHN LAURICELLA's investigatory stop of Officer Matthew Konkle. First, JOHN LAURICELLA, did not feel free to leave or decline the officers' requests or otherwise terminate the encounter. Second, there was

no reasonable suspicion or lesser standard of probable cause to detain much less to, point to specific and articulable facts, which, taken together with rational inference from those facts, reasonably warrant the intrusion. This violates the Fourth Amendment to U.S. Constitution.

Counsel should have known this on appeal as well as trial. **United States v. Cronic** 466 U.S. 648, 656, 104 S.Ct. 2039, 80 nL.Ed.2d 657 (1984). Appeal Counsell's assistance falls below an objective standard of reasonableness.

The Court of Appeals has discretion to accept review of any issue argued for the first time on appeal. **RAP** 2.5(a).

It could of also been argued evidence from the unconstitutional exploratory search and arrest was not reasonable because they were invalid. Counsel should have challenged this and Miranda evidence derived from the unconstitutional actions of the law enforcement and suppressed as fruits of the poisonous tree. **United States v. Williams**, 615 F.3d 657, 668-669 (6th Cir. 2010)(Citing **Wong Sun v. United States**, 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)). The test is whether the evidence was discovered by exploitation of the illegality, or instead by means sufficiently distinguishable to be purged of the primary taint. **Id.**

The Sufficiency of evidence should be considered with this argument(s) JOHN LAURICELLA, raises because the prosecution bears the burden of proving that tainted evidence is admissible.

Taylor v. Alabama, 457 U.S. 687, 690, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982).

This Court is urged to accept review and ORDER further review on JOHN LAURICELLA's constitutional issues under: U.S. Const. Amend. IV applicable to the states through the action of Fourteenth Amendment; **Mapp V. Ohio**, 367 U.S. 643 (1961). Similarly, Article 1, Section 7 of the Washington State Constitution provides that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

This applies because the investigation and detaining JOHN LAURICELLA, because he and his son are out in a country roads that is not suspicious or a crime and intrude on their day as evidence by the Officer detaining for 75 Minutes asking questions handcuffing & uncuffing, and engaging in Un-Mirandaized conversations until JOHN LAURICELLA's conversation is sent down a emotional response.

JOHN LAURICELLA, is a law abiding citizen and a not guilty finding by the jury of Hunting is proof that he was not involved in any criminal activity with his son. Further there is no evidence that a weapon was used. JOHN LAURICELLA, is a fan of the famous "Bundy" incident that resulted in law enforcement killed "Bundy". Thus, JOHN LAURICELLA, may be guilty of being a fan and "Parrot-ing the famous lines of that stand off. But hardly a threat to law enforcement.

The evidence does not tip to the favor of a conviction. The

fact-findings on COA OP. pages 1-4 is overlooked or misapprehended both matter of material facts and the law evidence, alternatively, Appeal counsel was ineffective in failing to raise these issues herein. **RAP 13.4(1)(3)& (4).**

The Court should strike the findings and the lower court briefing and ORDER that JOHN LAURICELLA, can proceed on a direct appeal anew in light of the issues that have been overlooked. And these issues are meritorious and not limited to the issues JOHN LAURICELLA has touched upon. JOHN LAURICELLA, has now access to a law library and can conduct a pro-se showing of merrits to his case. Further, JOHN LAURICELLA, is without his Verbatim of the Proceedings and has asked counsel for them.

THE SUPREME COURT SHOULD ACCEPT REVIEW OF SIGNIFICANT CONSTITUTIONAL AND NO-CONSTITUTIONAL ISSUES THAT ARE OF SUBSTANTIAL PUBLIC INTEREST AND SHOULD BE DETERMINED BY THE SUPREME COURT. **RAP 13.4(b)(3)&(4).**

The COA OP. suggests that the evidence against JOHN LAURICELLA, was overwhelming, this conclusion is likewise and unreasonable determination. No where in the video of 75 Minutes is JOHN LAURICELLA, Miranda warnings was cited. After the cuffing a reasonable person would think he was not free to go. After all JOHN LAURICELLA, was upset by the intrusion and he and his son was not out visiting the game warden on a sunny drive. They were out in a father and son day and not hunting or fishing. They have their constitutional rights to bear arms. JOHN LAURICELLA, and his son had a legitimate expectation of privacy.

The COA OP. unreasonably concluded that JOHN LAURICELLA, was armed for a commission of a crime. The mens rea is not there in the record and this Court should accept review and grant JOHN LAURICELLA the relif below holding that the evidence of the use of a weapon to facilitate a crime evidence is insufficient. This Court should review the 75 min. video evidence and the "Bundy" citing's JOHN LAURICELLA referenced in the book. All this is evidence entered in the record.

The **Chapman v. California**, 386 U.S. 18, at 23 (1967) Cautions against the overemphasis on overwhelming evidence in determining harmless Constitutional error.

The factual issues do not require the attention of this Court. What does merit review is the emerging practice of the lower court in the OP. practice of ignoring evidence while performing sufficiency of the evidence analysis. **Supra**,

The Opinion of the Court of Appeals presents a substantial constitutional question is contrary to decisions of the United Sates Supreme Court and the Washington State Constitution. This Court should grant review.

RELIEF REQUESTED:

1. That this Court Dismiss the Judgment against JOHN LAURICELLA, and remand back to the Superior court for further instruction in this Court's Holding.
2. Remand to the Court of Appeals and allow JOHN LAURICELLA, to argue his issues without a attorney.

3. Any other relief this Court deems in The Interest of Justice require.

CONCLUSION

For the reasons above, this Court should grant review of JOHN LAURICELLA's case.

RESPECTFULLY SUBMITTED THIS 15 day of November, 2019.

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FILED
NOVEMBER 5, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. JOHN J. LAURICELLA, Appellant.	)	No. 36128-4-III UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — John Lauricella appeals one of two convictions, his conviction for intimidating a public servant. He argues the State failed to present evidence that he made threats in an attempt to influence a peace officer in the officer's public duty. We disagree and affirm that conviction.

In a supplemental brief, he challenges various legal financial obligations (LFOs) imposed against him by the trial court. In accordance with the State's request, we remand and direct the trial court to strike all LFOs except the $500 victim assessment fee and the $100 DNA[1] collection fee.

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[1] Deoxyribonucleic acid.

FACTS

John Lauricella was driving with his son in the Little Pend Oreille National Wildlife Refuge. Lauricella drove past Officer Matthew Konkle who was approaching from the opposite direction. Officer Konkle followed Lauricella's pickup and eventually Lauricella pulled over to the side of the road. Officer Konkle never activated his patrol lights. After stopping, Lauricella got out of his pickup and walked to the back of it. Officer Konkle approached Lauricella and asked whether he had seen any deer or if he was hunting.

Lauricella responded he was looking for coyotes. Officer Konkle saw a shotgun inside the pickup and asked Lauricella's son if it was loaded. Lauricella's son said it was not loaded and showed Officer Konkle the empty chamber. When Officer Konkle asked to see the shotgun so he could make sure there were no rounds in the tube, Lauricella became irate and angry.

Officer Konkle then asked Lauricella for his small game hunting license because Lauricella was looking for coyotes. Lauricella responded that he did not have a small game hunting license because he was not hunting.

Officer Konkle began putting Lauricella in handcuffs for suspicion of hunting small game without a license. Lauricella then became even more irate, telling his son to

take out his phone and start recording. He also told his son to "load up," which Officer Konkle understood to mean to load the shotgun. Report of Proceedings (RP) (May 16, 2018, afternoon session) at 72. Because Officer Konkle was alone, he decided to de-escalate the situation and instead write a ticket.

Lauricella warned, "Next time cuffs come out, f-ing guns out." Ex. 3, Video 1 at 11:30. Lauricella became even more agitated when he learned that Officer Konkle was going to issue him a ticket. When the officer returned to his patrol car to write the ticket, Lauricella began threatening he would shoot any officer who came near him.

In the video recording taken by Lauricella's son, Lauricella can be heard telling his son to stand in front of him, saying, "Women and children in the front." Ex. 3, Video 2, 0:06:40-0:06:48. He told Officer Konkle he could shoot, "or be nice like you should and not write a ticket." Ex. 3, Video 2 at 6:47.

When discussing whether Officer Konkle was going to write a ticket, Lauricella said, "you want to escalate shit tough guy? Write a ticket." Ex. 3, Video 2 at 7:32. He told the officer if he wrote a ticket he would "wipe my ass with it right on your f-ing face." Ex. 3, Video 2 at 9:20. He continued, "Write a ticket . . . if you want to escalate . . . if you want a shoot-out." Ex. 3, Video 2 at 17:42.

Backup arrived, and Lauricella was taken into custody. A search incident to arrest found a loaded 9 mm handgun on Lauricella.

The State charged Lauricella with count 1, intimidating a public servant, and alleged a firearm enhancement, count 2, obstructing a law enforcement officer, and count 3, second degree unlawful hunting of wild animals.

The case proceeded to a jury trial. The jury found Lauricella guilty of intimidating a public servant and returned a yes on the firearm enhancement. The jury also found Lauricella guilty of obstructing a public servant, but not guilty of unlawful hunting of wild animals.

The court imposed LFOs in the amount of $1,100. The LFOs included nondiscretionary and discretionary costs, including a $200 criminal filing fee.

Lauricella timely appealed to this court.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

Lauricella first argues the State presented insufficient evidence for the jury to find him guilty of intimidating a public servant. Specifically, Lauricella argues the evidence was insufficient for the jury to find that his conduct was intended to influence the arresting officer's official actions. We disagree.

In a criminal case, the State must provide sufficient evidence to prove each element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). When a defendant challenges the sufficiency of the evidence, the proper inquiry is "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* Furthermore, "[a] claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* In a challenge to the sufficiency of the evidence, circumstantial evidence and direct evidence carry equal weight. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

RCW 9A.76.180(1) provides that a person "is guilty of intimidating a public servant if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant." The State must prove that the defendant made a threat and that the threat was made with the purpose of influencing the public servant's official action. *State v. Montano*, 169 Wn.2d 872, 876, 239 P.3d 360 (2010). "[T]here must be some evidence suggesting an attempt to influence, aside from

the threats themselves or the defendant's generalized anger at the circumstances." *Id.* at 877.

In *Montano*, the defendant violently resisted two arresting police officers, and he became increasingly angry and hurled insults and threats at them. *Id.* at 874-75, 879. The defendant said to the officers, "'I know when you get off work, and I will be waiting for you,'" "'I'll kick your ass,'" and "'I know you are afraid, I can see it in your eyes.'" *Id.* at 875. Our Supreme Court affirmed the pretrial dismissal, concluding,

> [T]here is simply no evidence to suggest that [the defendant] . . . made his threats[] for the purpose of influencing the police officers' actions. Instead, the evidence shows a man who was angry at being detained and who expressed that anger toward the police officers. . . .
>
> . . . The State cannot bring an intimidation charge any time a defendant insults or threatens a public servant. . . . [The statute requires] some evidence . . . [that] link[s] the defendant's behavior to an official action that the defendant wishes to influence.

Id. at 879-80. Thus, the court held that Mr. Montano could not be guilty of intimidating a public servant because there was no link between his threats and the officers' actions he wished to influence.

In *State v. Burke*, 132 Wn. App. 415, 417, 132 P.3d 1095 (2006), the drunken defendant belly bumped an officer investigating an underage drinking party. Burke then yelled profanities and threats at the officer, took a fighting stance, threw a punch, and eventually was arrested. *Id.* at 417-18. In reversing Burke's conviction, we noted an

absence of evidence that Burke intended to influence the officer's official actions and noted that neither anger nor assaultive behavior implies an intent to influence. *Id.* at 422-23.

The link, missing in *Montano* and *Burke*, is present here. Lauricella repeatedly asked Officer Konkle not to write a ticket. He then made both implied and explicit threats that he would shoot Officer Konkle if he tried to give him a ticket. We conclude that the State presented sufficient evidence for a jury to find beyond a reasonable doubt that Lauricella attempted to influence Officer Konkle not to give him a ticket.

B. LFOs

In a supplemental brief, Lauricella raises two new issues. The State does not object to Lauricella's supplemental brief.

Lauricella first argues that a new sentencing hearing must be ordered because the trial court imposed discretionary LFOs against him without making an individualized inquiry into his ability to pay them, as required by *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). The State responds that the trial court did have sufficient information about Lauricella to determine that he had the ability to pay discretionary LFOs. The State cites various statements made by Lauricella's attorney, wife, and friend, while asking the court not to impose too harsh of a sentence. We disagree with the State.

At the sentencing hearing, Lauricella's attorney, wife, and friend made various generalized statements about how Lauricella is a good man, has worked, has volunteered, and "was on the road to starting a pest control business." RP (June 5, 2018) at 338. But the trial court did not make any specific inquiries about Lauricella's current or likely future ability to pay, including his specific assets, sources of income, or debt. *Blazina* requires a specific inquiry into such matters. *Blazina*, 182 Wn.2d at 838.

Lauricella next argues the trial court erred when it imposed the $200 criminal filing fee. Because of the State's request, discussed below, we need not directly address Lauricella's argument.

The State requests that rather than order a new sentencing hearing—which we would because the trial court failed to conduct a sufficient *Blazina* inquiry—that we remand with directions for the trial court to strike all LFOs except the $500 crime victim fund assessment and the $100 DNA collection fee. Supp'l Br. of Resp't at 3. We grant the State's request.

Affirm conviction, remand to strike costs.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Fearing, J.

Pennell, J.

INMATE

November 15, 2019 - 9:40 AM

Transmittal Information

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