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Washington State Supreme Court

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Ronald R. Carpenter  
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75670-2

No. 92084-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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Candee Washington, and all other persons similarly situated,  
Petitioner,

v.

Director of the Department of Licensing, a subdivision of the State of Washington, in his/her official capacity and John and/or Jane Doe unidentified Swinomish Tribal Police Officers and General Authority Police Officers pursuant to RCW 10.92 in their official capacity and tribal police officers involved in the seizure and forfeiture of automobiles owned by Non Native American as individuals,

Respondents.

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APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT  
FOR SKAGIT COUNTY

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HONORABLE SUSAN COOK

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BRIEF OF APPELLANT

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The statutory language is clear and the insurers of the Swinomish Tribe ought to be attached and the case should proceed. There has been a limited waiver of the Swinomish Tribe’s sovereign immunity to the extent that it has accepted the benefits of having its officers certified as Washington peace officers and has insured them.

Even if there was no waiver by the Tribe, tribal sovereign immunity does not protect individual police officers whose conduct caused the illegal seizure and forfeiture of plaintiff's vehicle, because they exceeded their authority whether acting as tribal officers or as Washington peace officers.

Finally, even if the court determines that immunity precludes all other relief requested, at a minimum the court should grant injunctive and declaratory relief so that the Department of Licensing ceases its practice of transferring vehicle title based on void forfeiture judgments.

## I. ASSIGNMENTS OF ERROR

1. The trial court erred in granting the motion of the Director of the Department of Licensing to dismiss the case pursuant to CR 19 for failure to join as an indispensable party the Swinomish Indian Tribe.
2. The trial court erred in denying appellant's motion for an injunction and for costs and attorney fees.

## II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the Swinomish Nation by seeking and obtaining certification of its tribal police officers as General Authority Washington State Police Officers pursuant to RCW 10.92 made a limited waiver of its sovereign immunity up to the monetary limits of the insurance purchased to qualify for the state grant of authority under the statute and rendered its officers subject to lawsuit to the same extent as all other General Authority Washington State Police Officers; RCW 10.92.020 2 (a) (ii).
2. Regardless of whether the Swinomish Nation asserts its sovereignty and reneges on its commitment under RCW 10.92, its tribal officers are liable to suit in their individual capacities under *Pistol v. Garcia* 791 F3d 1104 (9<sup>th</sup> Cir. June 30, 2015) and *Maxwell v. County of San Diego*, 697 F3d 941 (9<sup>th</sup> Cir. 2012) because they acted in excess of their authority.
3. Even if the case should have been dismissed pursuant to CR 19, nevertheless the court should have restrained the Department of Licensing from transferring title on Certificates of Ownership based upon tribal court order of forfeiture of motor vehicles owned by non tribal members and awarded reasonable attorney fees and costs pursuant to 42 USC 1983, 1988 and *Ex Parte Young* 209 US 123 (1908).

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### III. STATEMENT OF THE CASE

#### 1. Statement of the Facts

On or about February 14, 2014, unknown Swinomish Police Officers seized for forfeiture appellant Ms. Candee Washington's vehicle, a 2007 Nissan Armada, at the Swinomish Casino on Route 20 in Skagit County, Washington. Candee Washington is not a Native American. The basis for the forfeiture was that two of the occupants of the vehicle possessed heroin and its paraphernalia. Ms. Washington did not possess any illegal substances.<sup>1</sup>

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<sup>1</sup> The Swinomish Nation drug code authorizes the forfeiture of a motor vehicle in which a controlled substance is kept or used, which means that a non Native American visiting a casino on tribal land could have his/her motor vehicle forfeited to the tribe for possession of one marijuana joint. The second ground for forfeiture, found applicable in petitioner's case, authorizes forfeiture of a motor vehicle in which an occupant unlawfully possesses a narcotic drug. A copy of the Swinomish Nation's Drug Forfeiture Code is attached as Appendix 1. By contrast, RCW 69.50.505 provides "All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; "The Swinomish Code refers to owner or claimant and provides that a claimant "may prove his or her lien mortgage or conditional sales contract to be bona fida and that his or her right title or interest was created after a reasonable investigation of the moral responsibility character and reputation of the purchaser and without knowledge that the vehicle was used or was being, or was to be used for the purpose charged."

In the context of the facts of this case, petitioner's SUV was not subject to seizure pursuant to state law because an owner of a motor vehicle in which passengers possess controlled substances is not subject to forfeiture. Only in the case of a vehicle used as a common carrier in the transaction of business as a common carrier is subject to forfeiture if it is demonstrated that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW. Under RCW 69.50.505 an innocent owner or lien holder without knowledge that the vehicle is

Subsequently, the Swinomish Indian Tribal Community filed a forfeiture action against the 2007 Nissan Armada in Swinomish Tribal Court and notified petitioner of the action. The action was commenced against the vehicle pursuant to Title 4 of the Criminal Code section 4-10-050. On February 24, 2014 Judge M. Pouley of the Swinomish Tribal entered an order forfeiting the vehicle.

On or about June 24, 2015, agents of the Swinomish Indian Tribal Community Police Department<sup>2</sup> Nation presented the Swinomish Tribal Court order of forfeiture to the Washington State Department of Licensing and as a consequence thereof, the Department of Licensing amended the Certificate of Title and transferred ownership of petitioner's SUV vehicle to the Swinomish Tribal Police Department. Copies of the tribal order of forfeiture, and the paperwork germane to the transfer of title are attached herewith as Appendix 2.

## 2. Procedural History

In Ms. Washington's case, she sued the Director of the Department of Licensing pursuant to 42 USC 1983 for changing her Certificate of Title without notice to her and for violation of her constitutional rights because the Swinomish Tribal Court lacked subject matter jurisdiction to forfeit her truck because she is a

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used to transport drugs for sale or delivery is not subject to forfeiture. Under the Swinomish Code, only a lienholder can assert a lack of knowledge defense and this applies where a possessory amount of drugs is found in the motor vehicle or in the possession by an occupant of a narcotic in the vehicle and besides showing a lack of knowledge, the lienholder has to also establish that he/she that his or her right title or interest was created after a reasonable investigation of the moral responsibility character and reputation of the purchaser and without knowledge that the vehicle was used or was being, or was to be used for the purpose charged."

<sup>2</sup>The Swinomish Indian Tribal Community Police Department is the only Indian Tribe in Washington which has sought and obtained authority under RCW 10.92 for all of its tribal police officers to act as General Authority Washington State Police Officers and thus are empowered to enforce state law against Non Native Americans; see Report of Proceedings May 1, 2015 page 13, lines 14-15.

Non Native American. She sought a declaration that this process was unlawful and also sought an injunction against the Department of Licensing prohibiting any change in certificate of title based upon tribal court orders of forfeiture. Washington also sought reasonable costs and attorney fees pursuant to 42 USC 1988 and Ex Parte Young 209 US 123 (1908).

Washington named unidentified Swinomish Tribal Police Officers as defendants in their individual capacities and in their capacity as General Authority Police Officers pursuant to RCW 10.92 and all tribal police officers as individuals. Because Ms. Washington did not recall the names of the Swinomish Tribal Police Officers who seized her SUV, her attorney's investigator requested in writing the names of the police officers who seized petitioner's SUV and, in response, received an email from the Swinomish Tribal Prosecuting Attorney refusing to divulge this information based upon the tribal or federal sovereignty immunity; see Report of Proceedings, May 1, 2015 pages 14-16. A copy of the email is attached as Appendix 3.

When Washington was unable to ascertain the identity of the Swinomish Indian Nation police officers who seized her 2007 Nissan Armada, she moved to bring them before the court by way of a writ of attachment of insurance policies purchased by the Swinomish Nation as a condition for receiving state certification of its tribal officers as Washington state law enforcement officers. The policies are required by state statute to be "available to satisfy settlements or judgments arising from the tortious conduct of tribal police officers when acting in the capacity of a

general authority Washington peace officer, and that to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct.” RCW 10.92.020(2)(a)(ii).

Because the Department of Licensing had changed the ownership title on Ms. Washington’s 2007 Nissan Armada upon presentation of the Swinomish Indian Nation Tribal Court order only, Washington sought discovery from the Department of Licensing of the names and addresses of all persons whose Certificate of Title was changed upon presentation of an order of forfeiture from a Washington State Indian Tribe. The Department resisted the discovery request as overly burdensome and sought a protective order.

These motions were addressed in a hearing before the Honorable David Needy Skagit County Superior Court Judge on May 1, 2015. The Department of Licensing asserted that compliance with Ms. Washington’s request for identification of all persons whose Certificate of Titles were changed by the Department in response to receipt of an order from a tribal court changing ownership, required the full name and date of birth of each owner name and and/the VIN number of the particular motor vehicle; see Report of Proceedings, May 1, 2015, page 1, lines 23-25, page 2. The records of the Department of Licensing concerning title to automobiles are not digitalized, meaning, a computer could not key on all documents sequential in the chain of title of any automobile to a Swinomish Indian Tribal court

order of forfeiture, thereby identifying that class of people whose ownership interest was changed by the Department of Licensing upon receipt of an order of forfeiture from the Swinomish Tribal Court.

Counsel for Ms. Washington summarized the state of the facts relating to seizure and confiscation of motor vehicles owned by non tribal members for violation of the tribal drug code and asserted that all of the Indian tribes not just the Swinomish were engaged in the confiscation of automobiles owned by non tribal members for violation of the tribe's drug forfeiture law; see Report of Proceedings, May 1, 2015, page 5, lines 9-16. Later counsel would estimate the number to be from a hundred to a thousand; see Report of Proceedings, May 1, 2015, page 7, lines 9-13. Counsel for Ms. Washington recounted his unsuccessful effort to identify the Swinomish Nation police officers who seized Ms. Washington's 2007 Nissan Armada. For this reason, counsel requested a Writ of Attachment issue to the insurance companies who insured the Swinomish Nation police officers under RCW 10.92, Report of Proceedings, May 1, 2015 page 14, 15. The Attorney General representing the Director of the Department of Licensing did not oppose the issuance of a Writ of Attachment, which the court announced it would sign. Report of Proceedings of May 1, 2015 page 18, lines 22-23.

Before Ms. Washington could obtain the judge's signature on a Writ of Attachment, the Director of the Department of Licensing moved to dismiss the case for failure to join an indispensable party, the Swinomish Indian Nation. This motion

was heard and granted on July 2, 2015 by Skagit Court Superior Court Judge Susan Cook.

#### IV. SUMMARY OF ARGUMENT

This case presents the question of whether RCW 10.92 will function. The Superior Court's decision rests on the acceptance of the Department's argument that the Swinomish Tribe has sovereignty and has exercised it such to defeat any lawsuit against tribal officers, all of whom have been certified as General Authority Washington State Police Officers. The Swinomish Tribe waived its sovereignty up to the limits of insurance that it purchased when its officers were certified as General Authority Washington State Police Officers pursuant to RCW 10.92.020 (2) (a) (ii). RCW 10.92 was intended to allow lawsuits to be brought against a Swinomish Indian Nation police officer for violation of civil rights when he acts in his official capacity as a General Authority Washington State Police Officer pursuant to RCW 10.92. The only limitation is that the monetary award cannot exceed the limits of the insurance policy.

Even if RCW 10.92 does not operate as a waiver of the Swinomish Tribe's sovereign immunity, the Tribe is not an indispensable party because its sovereign immunity does not protect tribal officers as individuals from suit in state court for acting outside of the scope of their authority.

Even if the Tribe and its unnamed officers are immune from this suit, the Department of Licensing is not. The Department has allowed, and continues to allow, certificates of title to be registered on the basis of tribal court judgments of forfeiture

against non Indians. Such tribal court judgments are void for lack of subject matter jurisdiction. The court should enjoin the Director of the Department from transferring ownership of Certificates of Title based upon presentation of Indian tribal court orders of forfeiture and award petitioner costs and attorney fees.

Petitioner Appellant urges the court to grant direct review and reverse the decision of the Superior Court because the dismissal under CR 19 is inequitable. There has been a limited waiver of the Swinomish Tribe's sovereign immunity to the extent that the Swinomish Tribe has accepted the benefits of having its officers certified as Washington peace officers and has insured them. In addition, regardless of whether the Swinomish Indian Nation has waived its sovereign immunity, its police officers are liable to suit in their individual capacities under *Pistol v. Garcia* 791 F.3d 1104 (9<sup>th</sup> Cir. June 30, 2015) and *Maxwell v. County of San Diego*, 697 F3d 941 (9<sup>th</sup> Cir. 2012) because they acted in excess of their authority.

## V. INTRODUCTION

This case first presents the question of whether Indian Tribes possess authority under the second exception of *Montana v. United States*, 450 U. S. 544, 101 S. Ct. 1245, 67 L.Ed2d 493 (1981) to forfeit automobiles owned by non Native Americans pursuant to a tribal drug forfeiture ordinance. The answer is no. *Miners Electric v. Creek Nation*, 464 F. Supp. 2d 1130 (2006) is a correct statement of federal law. While *Miners Electric* was reversed by the 10<sup>th</sup> Circuit at 505 F.3d 1007 on Indian sovereignty grounds, the legal analysis of the United States District Judge H. Dale Cook in *Miners Electric* on whether tribal courts

have subject matter jurisdiction to forfeit non Native American's automobile for violation of tribal drug forfeiture laws remains sound. Appellant embraces and adopts its reasoning.

Next, if the Swinomish Tribe lacks the authority to seize and forfeit the automobiles of non Native Americans for violating the tribe's drug forfeiture law, yet Swinomish Indian Tribe police officers carry out such seizures, are the tribal RCW 10.92 police officers liable to suit for the illegal confiscation of the automobile? So far the answer the trial courts have given is no. They are wrong.

Underpinning plaintiff's claims for damages is the legal principle that the Swinomish Nation lacks authority to enforce its tribal drug forfeiture code against non tribal members. The Department argued that Washington's lawsuit requires the court to declare that the Swinomish Nation lacks authority to enforce its drug laws against nonnative Americans, thereby making the Tribe an indispensable party to a lawsuit against the police officers in their official capacity as RCW 10.92 officers and as individuals. The Swinomish Tribe's sovereignty is implicated, the Department argues, by any declaration, injunction or legal ruling which addresses whether an Indian tribe has subject matter jurisdiction to forfeit an automobile owned by a non tribal member for violating the tribes' drug forfeiture law. According to the Department, the Tribe's sovereignty interest prohibits a legal determination of whether an injunction ought issue against the Director of the Department of Licensing, or whether damage actions can proceed against unknown Swinomish Police Officers and their insurance policy for the

seizure and conversion of the automobile owned by the non tribal member for violation of the Tribe's drug forfeiture law; see Report of Proceedings May 1, 2015, page 15, lines 1-5.

Here and in the companion case of Scott v. Director of the Department of Licensing, Washington Supreme Court No. 92458-9, police officers of the Swinomish Indian Nation seized and forfeited under the tribal drug code automobiles owned by non Native Americans. In both cases, the Swinomish Nation presented its order of forfeiture to the Department of Licensing and the Department in response thereto transferred ownership of the Certificate of Title of the Motor Vehicle. In the case of appellant Candee Washington, her 2007 SUV was transferred to the Swinomish Indian Tribe and the Nissan Armada SUV is currently being used by the Swinomish Police Department; see Appendix 2.

Because the Department quickly moved for and obtained an order of dismissal under CR 19, Ms. Washington's lawsuit against the Director of the Department for illegal transfer of ownership of her 2007 Nissan Armada and her action for damages against the unknown officers who seized her SUV was suffocated before it could properly begin. Washington was never able to get a Writ of Attachment of the insurance policies insuring Swinomish tribal police officers for action taken by them under color of state law in violation of civil rights of citizens of the United States and the State of Washington. The dismissal of the lawsuit in response to the Department's CR 19 motion and argument creates a precedential log jam where persons in a similar situation will not be

allowed to pursue lawsuits against unknown Swinomish Nation police officers for actions taken when acting under color of state law. This state of affairs nullifies the intention of the legislature in passing RCW 10.92.020 (2) (a) (ii).

The resolution of these issues has broad impact as illustrated by this case and Jordynn Scott case and others such as Pierson v. Director of the Department of Licensing, *supra*.

In yet another case, a truck owned by Curtis Wilson, a non Native American, was seized by Lummi Nation police officers off reservation in Bellingham, Washington and held by the Lummi Tribe for forfeiture for about five months before its return. Wilson sued the Lummi police officer involved individually for conversion. Originally filed in Whatcom County Superior Court against the Lummi police officer individually in Cause No. 14-202821-7, the case was removed to federal court and assigned to Judge John Coughenour and assigned Cause No. 2:15 –cv-00629-JCC. The individual tribal police officer's liability was extinguished upon the certification of the United States Attorney that the Lummi police officer was acting within the scope of his employment. Thus the United States has undertaken the burden of his defense under the Federal Tort Claims Act. A motion for summary judgment declaring that the Lummi Nation has no authority to seize and forfeit automobiles owned by non tribal members is presently under consideration before Judge John Coughenour in the United States District Court for the Western District of Washington.

## VI. ARGUMENT

1. The court erred in concluding that RCW 10.92 does not operate as a waiver of sovereign immunity. A correct exercise of statutory construction of RCW 10.92 shows that it operates as a limited waiver by the Tribe of sovereign immunity, only to the extent of its insurance policies purchased by the Swinomish Nation as a condition for receiving state certification of its tribal officers as Washington state law enforcement officers and only in circumstances where tribal officers commit torts when acting in the capacity of a general authority Washington peace officer. The unnamed tribal officers could not have been legitimately acting in any other capacity than as a general authority Washington peace officer when they seized plaintiff's SUV.

It is a cardinal principle of statutory construction that when a legislative body enacts a statute, it intends that the statute will work, not fail. King v.

Burwell, 135 S. Ct. 2480, 576 U.S. \_\_\_\_ (2015), (June 25, 2015):

A fair reading of legislation demands a fair understanding of the legislative plan. Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter....

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Underpinning the Department's motion to dismiss under CR 19 is a claim of the absolute sovereign immunity of the Swinomish Tribal Community. The plain language of the statute, however, shows that The Swinomish Tribe clearly waived its immunity to a limited extent, that is, up to the limits of its insurance and to the extent its tribal officers commit torts when acting in the capacity of a general authority Washington peace officer. The Swinomish Tribe has accepted the benefits of the statute by securing the State of Washington's recognition and authority to act as general authority Washington peace officers under RCW

10.92.020(2). A general authority Washington peace officer is an officer authorized to enforce the criminal and traffic laws of the state of Washington generally. RCW 10.92.010(1). The State's recognition and authority is subject to the Tribe, as a sovereign tribal nation, submitting proof of professional liability insurance for its peace officers under RCW 10.92.020(2)(a):

(2) A tribal police officer may exercise the powers of law enforcement of a general authority Washington peace officer under this section, subject to the following:

(a) The appropriate sovereign tribal nation shall submit to the department of enterprise services proof of public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state. For purposes of determining adequacy of insurance liability, the sovereign tribal government must submit with the proof of liability insurance a copy of the interlocal agreement between the sovereign tribal government and the local governments that have shared jurisdiction under this chapter where such an agreement has been reached pursuant to subsection (10) of this section.

By agreeing to the terms of the statute, the Tribe waived sovereign immunity for the acts of its officers when they are acting as Washington peace officers. If the statute does not act as a waiver, it will not work. It will be a nullity. One who is injured by a tribal officer acting with the powers of a Washington peace officer will have no recourse. Obviously the legislature contemplated that tribal officers who are allowed to act with police power equivalent to an officer of the Washington State Patrol will sometimes act tortiously, just as officers of the Washington State Patrol sometimes do. The legislature wanted to ensure that before tribal officers were allowed to act with Washington police powers, there would be an insurance policy available for settlements or judgments. Plaintiff has

brought a suit, which may result in a settlement or judgment. By dismissing the suit, the court has frustrated the clear intent of the legislature.

And the court's ruling not only frustrates plaintiff Candee Washington's suit, it implies that RCW 10.92 is entirely ineffective against any non Indian plaintiff who attempts to bring suit against a tribal officer for torts committed in the capacity of a Washington peace officer. The court's ruling adopts the Department of Licensing's syllogism: (1) whenever a tribal officer is sued in state court for a tort committed as a peace officer, the Tribe needs to be joined because its interests are implicated; (2) the Tribe is immune and therefore cannot be joined; therefore (3) the case must be dismissed. This is erroneous reasoning. It cannot stand if the statute is to be effective. The statute plainly states that "to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct." RCW 10.92.020(2)(a)(ii).

Dismissing a tort claim against the Swinomish Nation police officer because the tribe is immune and cannot be joined eviscerates RCW 10.92.030 (ii).

2. Even if RCW 10.92 does not operate as a waiver of the Tribe's sovereign immunity, the Tribe is not an indispensable party because its sovereign immunity does not protect tribal officers from suit in state court for acting outside of the scope of the inherent authority of the Tribe.

*Pistol v. Garcia* 791 F.3d 1104 (9<sup>th</sup> Cir. June 30, 2015) and *Maxwell v. County of San Diego*, 697 F.3d 941 (9<sup>th</sup> Cir. 2012) hold that tribal police officers are liable to suit in their individual capacities if they acted in excess of their authority.

While the Tribe undisputedly has sovereign immunity to the extent it is not waived, its immunity is a personal defense, i.e. personal to the Tribe. The plaintiff has not sued the Tribe. The plaintiff is suing unnamed tribal officers individually and in their capacity of RCW 10.92 General Authority Washington Peace Officers, and if the Swinomish Tribe refuses to disclose their identities, their insurers, who can be identified. The sovereign immunity of the Tribe does not serve as a defense for the insurance company that has insured the officers.

See *Smith Plumbing v. Aetna Casualty*, 149 Ariz. 524 (1986). The court stated:

Aetna argued that it is immune from action by Smith because it is entitled to assert its principal's sovereign immunity. The Court of Appeals rejected this argument, and we approve its ruling. Generally, a surety may assert any defense available to its principal. *Spear v. Industrial Comm'n.*, 114 Ariz. 601, 562 P.2d 1099 (App.1977). One exception to this rule is where a principal takes advantage of a personal defense. Personal defenses "are ordinarily of such a character that the principal, as he chooses, may insist upon them or not." 74 Am.Jur.2d Suretyship § 104 (1974). The Tribe may choose to waive its sovereign immunity. *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 7, 480 P.2d 654, 657 (1971). Because the Tribe has the power either to insist upon or to waive its sovereign immunity, that immunity is considered a personal defense not available to the Tribe's surety. See 74 Am.Jur.2d Suretyship § 109.

Smith was a wholesale plumbing supply company, which sold supplies to another plumbing contractor, G. S. D. Plumbing, which in turn sold the supplies to White Mountain Apache Development Enterprise for use on a housing project. White Mountain Apache Development Enterprise was arguably an arm of the tribe and possessor of sovereignty. White Mountain purchased a bond from Aetna covering all persons and entities, which supplied material or labor on the project. The bond provided that the Tribe would indemnify Aetna for any monies paid out by Aetna.

The court held that Indian sovereignty was not impacted by requiring the surety to pay Smith the money owed. The same kind of monetary interest is involved here, and was likewise involved in the CR 19 case cited by Department of Licensing, Automotive Trade Union Organization v. Department of Licensing, 175 Wash.2d 214 (2014)—and that case affirmed denial of the CR 19 motion to dismiss sought by Department of Licensing in that case as an inequitable result. To dismiss in the present case would also result in inequity, plaintiff's loss of her car to the tribal police in violation of her rights under federal law. Federal law makes clear that a tribe does not have jurisdiction to forfeit a car belonging to a non-Indian as discussed more fully infra.

The insurance carriers for the Tribe under RCW 10.92, Hudson and Lexington Insurance Companies, are in the same situation as Aetna while plaintiff and other tort victims are in the position of Smith. Allowing this suit to proceed to trial would permit plaintiff to be compensated by the Hudson and

Lexington insurance policies purchased by the Swinomish Tribe for coverage under RCW 10.92. If plaintiff succeeds in obtaining that result at trial, the payment of money by the Hudson and Lexington insurance policies would have even less impact upon the Tribe than was the case in Smith. There is no indemnification arrangement between the insurer and the Tribe as there was in Smith.

The fact that the Swinomish Tribe freely entered into RCW 10.92 makes this case even stronger than the facts in Smith for allowing suit to proceed against the tribal officers. Plaintiff intends to proceed against the officers by means of a writ of attachment against the Hudson and Lexington insurance policies. Plaintiff's legal theory of proceeding against the insurance policies under RCW 10.92 is an expeditious and uncomplicated solution to the problem of how the State can allow tribal officers to act as Washington peace officers while still assuring that non Indians have the right to be compensated for those officers' torts, the same as if they were suing an officer of the Washington State Patrol. In no way does Washington's lawsuit against the unnamed tribal and RCW 10.92 law enforcement officers or their insurers threaten tribal sovereignty. Because the defense of sovereign immunity is personal to the Tribe, the court should not extend it to the Tribe's insurers.

The Smith Plumbing v. Aetna scenario is repeated in Unique v. Gila River et al, 138 Ariz 378, 674 P.2d 1376 Ariz. App. Div. 1 (1983). This time Unique delivered \$177,000 of fertilizer and sued to get paid. The court found that the

corporation had waived immunity when the tribe voted to allow it to enter into sue and to be sued contracts with suppliers such as Unique. This constitutes a waiver of sovereignty. The same kind of language was found to be a waiver of immunity in Nameagon Development Company v. Bois Forte Reservation Housing Authority 517 F.2d 508 (1975).

This court should follow White Mountain Apache Tribe v. Shelley, Superior Court Judge and Magini, 107 Ariz. 4 (1971). Magini made a contract with Fort Apache Timber Company referred to as FATCO in the opinion. Magini sued the White Mountain Tribe and FATCO as well as Barry DeRose, General Counsel, and Hai Butler, General Manager, of FATCO. The Arizona Supreme Court ruled that the tribe and its commercial subsidiary FATCO were immune from suit as was DeRose and Butler in their capacity as representatives of the Tribe and FATCO but the case was allowed to proceed against DeRose and Butler individually. The Arizona court concluded:

It is the opinion of this court that petitioners DeRose and Butler, as officers of FATCO, are entitled to executive immunity for their actions on behalf of FATCO which are within the scope of their respective duties as general counsel and general manager of FATCO. They are not immune from being sued individually, however, for any actions in excess of their duties as general counsel and general manager, respectively.

Petitioners' request for special action relief is granted to the extent that the superior court is prohibited from exercising further jurisdiction over FATCO. ***It is denied, however, to the extent that the Superior Court may assume jurisdiction over petitioners DeRose and Butler for the purpose of determining if they acted in excess of their official duties as alleged by respondent Magini.***

The same result should obtain here. Suit should proceed against the

Swinomish Police Officers who were involved in the seizure of plaintiff's SUV as individuals, and the insurance companies who insure them.

The Department of Licensing argues that the officer who seized plaintiff's vehicle was acting as a Swinomish Police Officer only, and not as a Washington peace officer. See Department's reply brief at p.2-3, citing Young v. Duenas, 164 Wa. App. 434 (2011). This argument is a defense that could be asserted at trial by the unknown Swinomish Police Officers or their insurance companies. Arguably at best for the Department, it is a jury question; see Romero v. Pedersen 5 F3d 547, (10<sup>th</sup> Cir. 1993) for criteria. On the face of the record as it presently exists, however, the law supports the opposite conclusion—that the Swinomish Tribe's police officers were acting as Washington peace officers. This is because—and this point of law is as yet undisputed by any party hereto--seizing a non-Indian's vehicle was beyond any tribal officer's power, just as forfeiting a non-Indian's vehicle is beyond the jurisdiction of a tribal court.

The authority of tribal police over non Indians contacted in Indian Country is severely limited. When the Swinomish officers contacted plaintiff in the Casino parking lot, if they were acting only as tribal officers, they were obligated to determine if she was an Indian before they exercised police power over her. This point of law is illustrated in Bressi v. Ford, 575 F3d 891, 9<sup>th</sup> Cir. 2009). The 9<sup>th</sup> Circuit reversed and ordered to trial a 42 USC 1983 action involving a stop of a non tribal member (Bressi) at a tribal roadblock of a state highway inside an Indian reservation. Bressi was later arrested by the tribal police. The tribal police

had state certification. They conceded that they acted under color of law when they arrested Bressi but not before, at the roadblock. Reversing the District Court grant of summary judgment of Bressi's 42 USC 1983 action against the tribal police officers, the court commented on the authority of tribal officers over non-tribal members in contacts in Indian Country as follows:

In the absence of some form of state authorization, however, tribal officers have no inherent power to arrest and book non-Indian violators. See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978). This limitation has led to obvious practical difficulties. For example, a tribal officer who observes a vehicle violating tribal law on a state highway has no way of knowing whether the driver is an Indian or non-Indian. The solution is to permit the officer to stop the vehicle and to determine first whether or not the driver is an Indian. In order to permit tribal officers to exercise their legitimate tribal authority, therefore, it has been held not to violate a non-Indian's rights when tribal officers stop him or her long enough to ascertain that he or she is, in fact, not an Indian. See *Schmuck*, 850 P.2d at 1337. If the violator turns out to be a non-Indian, the tribal officer may detain the violator and deliver him or her to state or federal authorities. *Id.*; see *Strate*, 520 U.S. at 456 n. 11, 117 S.Ct. 1404. This rule permitting tribal authority over non-Indians on a public right-of-way is thus a concession to the need for legitimate tribal law enforcement against Indians in Indian country, including the state highways. The amount of intrusion or inconvenience to the non-Indian motorist is relatively minor, and is justified by the tribal law enforcement interest. Ordinarily, there must be some suspicion that a tribal law is being violated, probably by erratic driving or speeding, to cause a stop, and the amount of time it takes to determine that the violator is not an Indian is not great. If it is apparent that a state or federal law has been violated, the officer may detain the non-Indian for a reasonable time in order to turn him or her over to state or federal authorities. *Id.* The intrusion and inconvenience becomes significantly greater, however, when a roadblock is placed across a state highway. The tribe has no general power of exclusion on the right-of-way. All vehicles are stopped, with no suspicion required. The likelihood is substantial that a great proportion of those stopped will be non-Indians not subject to tribal criminal jurisdiction. Yet

the tribe does have a legitimate purpose in stopping all vehicles with Indian operators to check for violations of tribal drunken-driving and safety laws, and other violations for which roadblocks are authorized by tribal law.<sup>6</sup>

We conclude that a roadblock on a public right-of-way within tribal territory, established on tribal authority, is permissible only to the extent that the suspicionless stop of non-Indians is limited to the amount of time, and the nature of inquiry, that can establish whether or not they are Indians. When obvious violations, such as alcohol impairment, are found, detention on tribal authority for delivery to state officers is authorized. But inquiry going beyond Indian or non-Indian status, or including searches for evidence of crime, are not authorized on purely tribal authority in the case of non-Indians.

Bressi cites Schmuck, a case from this State. State v. Schmuck, 121 Wash.2d 373, 850 P.2d 1332 (1993). Schmuck's sequel, State v. Eriksen, 172 Wn.2d 506, 259 P.3d 1079 (2011) provides further insight into the limitations upon tribal officers when they are acting solely as tribal officers in encounters with non Indians.

In the present case, the contact between tribal police and Ms. Washington obviously was extended far beyond the time necessary to determine that she was a non Indian. It is apparent from the finding of the tribal judge that the contact involved searches of persons and property. The only basis upon which such contact would arguably be lawful was the state certification, which permitted the Swinomish tribal officers to act under color of state law. A state officer may seize vehicles suspected of containing drugs only under limited circumstances that the record does not show to exist in this circumstance. And a state officer may not seek an order of forfeiture for a non Indian vehicle from a tribal court, nor may

such officer accept the forfeited vehicle for official use, because the tribal court lacks subject matter jurisdiction to forfeit a vehicle owned by a non Indian.

If the officers were only enforcing tribal law, as the Department of Licensing maintains, they were acting beyond their inherent authority and may not assert sovereign immunity, a defense personal to the Tribe. In such a case the Tribe's sovereign interests are not implicated and the Tribe is not an indispensable party. This is the rule of Tenneco Oil Company v. The Sac and Fox Tribe of Indians of Oklahoma, 725 F.2d 572 (10<sup>th</sup> Cir. 1984) where the court stated:

The situation (where there is tribal immunity) is different, however, when the law under which the official acted is being questioned. State of Wisconsin v. Baker, 464 F.Supp2. 1377 (W.D.Wis.). When the complaint alleges that the named officer defendants have acted outside the amount of authority that the sovereign is capable of bestowing, an exception to the doctrine of sovereign immunity is invoked. Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628. If the sovereign did not have the power to make a law, then the official by necessity acted outside the scope of his authority in enforcing it, making him liable to suit. Any other rule would mean that a claim of sovereign immunity would protect a sovereign in the exercise of power it does not possess. As the Larson Court stated of cases involving unconstitutional statutes: “[T]he conduct against which specific relief is sought is beyond the officer's powers and is, therefore, not the conduct of the sovereign.”

Under the Tenneco rule, purely tribal police officers who are not empowered to act as state police pursuant to RCW 10.92, are liable and do not get the protection of tribal immunity if they exceed their jurisdiction. Miners Electric v. Creek Nation, 464 F. Supp. 2d 1130 (2006) is a correct statement of federal law on the issue of whether an Indian Tribe possesses

authority under the second exception of *Montana v. United States*, supra, to forfeit automobiles owned by non tribal members for violation of tribal drug forfeiture ordinances. The Tribe has sovereign immunity but its officers do not when they act beyond their powers. The test for loss of tribal immunity set forth in *Tenneco* is at odds with a dismissal under CR 19 for failure to join an indispensable party.

*Zaunbrecher v. Succession of David*, 2015 WL 8330562, a December 9, 2015 decision of the Court of Appeal of Louisiana, 3<sup>rd</sup> Circuit is recent decision following the rule of *Tenneco Oil Company and Pistol v. Garcia*, supra, *Maxwell v. County of San Diego*, supra. In *Zaunbrecher*, Lee David frequented a Casino owned by the Tunica Biloxi Tribe at 5:30 pm and was asked to leave the Casino because of his intoxication twelve hours later at 6 a.m. David was escorted to his car from the Casino by two security guards. Once in his vehicle, Mr. David drove off and within five miles of the Casino collided with another car killing himself and the other motorist, Blake Zaunbrecher.

*Zaunbrecher's* estate filed a negligence action against the three Casino employees for over service of alcohol and for taking an obviously intoxicated person to his car and compelling him to drive on the roads of the state. The trial court dismissed the action based upon Indian sovereignty. The Court of Appeal reversed because the Casino workers were sued in their individual capacities for acting outside the scope of

their authority under *Maxwell v. County of San Diego*, 697 F3d 941 (9<sup>th</sup> Cir. 2012).

Appellant repeats that the net effect of the Superior Court's order of dismissal is to eliminate the possibility of any lawsuit under RCW 10.92 against tribal police officers who have acted tortiously in their capacity as Washington peace officers. Acting as Washington peace officers, these tribal police officers did not have authority to seize for forfeiture a vehicle where only the passengers possessed heroin. Thus, as officers authorized by state law, they acted tortiously. Acting as tribal police officers, they exceeded their powers. Either way, sovereign immunity is not available to them (or to the insurer) as a defense.

3. Even if the Tribe and its unnamed officers are immune from this suit, the Department of Licensing is not. The Department has allowed, and continues to allow, certificates of title to be registered on the basis of tribal court judgments of forfeiture against non Indians. Such tribal court judgments are void for lack of subject matter jurisdiction.

The Department of Licensing is hiding behind tribal sovereign immunity to avoid taking responsibility for its own illegal course of conduct. The record submitted by plaintiff shows beyond any doubt that the Department of Licensing routinely and unquestioningly accepts tribal court orders of forfeiture as a basis for transferring title. This is going on even while the Department has admitted to plaintiff in correspondence that such acceptance violates the Department's own protocols. The Department's letter (through assistant attorney general counsel) to

plaintiff's counsel on December 31, 2014, attached to this brief as Appendix 4, states that the Department's policy is to respond to a civil forfeiture notice issued by a Washington State agency, the Internal Revenue Service, or United States Customs. Tribal authorities are not on the list. The letter states, "In the instance of court orders from foreign jurisdictions, either (i) the ownership document (I.e. certificate of title) and the court order must be from the same jurisdiction, or (ii) the final court document must be filed with a Washington superior court clerk's office to be accepted by the Department." Neither of these circumstances is present here, yet the Department of Licensing throws up its hands and argues that nothing can be done. The Department is obligated to protect the interests of its own sovereign, the State of Washington, in ensuring lawful and orderly transfers of title that rest on valid judgments. The Department's own protocols are designed to ensure that vehicle ownership through forfeiture rests upon valid judgments. But the Department's actual practice as illustrated by this case and others is to transfer title based on tribal court forfeiture orders that are void for lack of subject matter jurisdiction.

A suitable method for protecting the due process rights of plaintiff Candee Washington and other non Indians similarly situated is found in CR 82.5(c):

(c) Enforcement of Indian Tribal Court Orders, Judgments or Decrees. The superior courts of the State of Washington

shall recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree (1) lacked jurisdiction over a party or the subject matter, (2) denied due process as provided by the Indian Civil Rights Act of 1968, or (3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the superior courts of the State of Washington.

This rule dictates that a superior court will not enforce a tribal forfeiture order where there is a lack of subject matter jurisdiction. The Department of Licensing, instead of routinely and heedlessly accepting tribal forfeiture orders, should require that a Tribe proceed under this rule and apply to the superior court, with notice to the affected registered owner, when seeking a certificate of title based on an order of forfeiture. This would allow the superior court to determine, as provided by the rule, whether the tribal court that rendered the order lacked jurisdiction.

4. Dismissal under CR19 would be an inequitable resolution and should be rejected for the same reasons the court refused to dismiss under CR 19 in *Automotive United Trades Organization v. State*, 175 Wn2d 214 (2012).

*Automotive United Trades Organization v. State* makes clear that relief under CR 19 should be equitable. Dismissing plaintiff's claim would be inequitable. Representatives of the Swinomish Tribe offended Washington sovereignty by bypassing CR 82.5 and thereby depriving Washington citizens of their right to a state court adjudication as to

whether the Swinomish Tribal Court order of forfeiture lacked subject matter jurisdiction before said judgment could be enforced in the State of Washington. The lawyers for the Hudson and Lexington Insurance Companies can effectively defend the interest of the Swinomish Tribe.

## VII. ATTORNEY FEES

Appellant seeks an award of costs and attorney fees pursuant to 42 U.S. C. 1983, 1988 against the Director of the Department of Licensing on the ground that appellant had a private property interest in her Certificate of Title which the Department changed to another person or entity without notice to her in violation of her rights under the 5<sup>th</sup> and 14<sup>th</sup> amendment. The Superior Court should have granted appellant's motion to enjoin the Director to comply with the Department's protocols and CR 82.5 which provides a notice and opportunity of Certificate of Title owner before their ownership interest in the Certificate of Title is changed. The Director deprived appellant of these rights while acting under color of state law.

Because the unknown Swinomish police officers acted under their authority under RCW 10.92 as state law enforcement officers in investigating appellant, searching and seizing her SUV and its passengers and facilitating its forfeiture by the Swinomish Tribe, said unknown police officers violated appellants' federal constitutional rights while acting under color of state. As such, said officers and their insurers are liable to pay costs and reasonable attorney fees pursuant to 42 U.S. C. 1983, 1988.

In *Seattle v. McReady*, 131 Wash.2d 266, 931 P.2d 156 (1997) has explicitly recognized four equitable exceptions to the American rule: (1) the common fund theory, *Grein v. Cavano*, 61 Wash.2d 498, 505, 379 P.2d 209 (1963); (2) actions by a third person subjecting a party to litigation, *Wells v. Aetna Ins. Co.*, 60 Wash.2d 880, 882–83, 376 P.2d 644 (1962); (3) bad faith or misconduct of a party, *Miotke v. City of Spokane*, 101 Wash.2d 307, 338, 678 P.2d 803 (1984); and (4) dissolving wrongfully issued temporary injunctions or restraining orders, *Cecil v. Dominy*, 69 Wash.2d 289, 291–94, 418 P.2d 233 (1966); *Alderwood Assocs. v. Washington Env'tl. Council*, 96 Wash.2d 230, 247, 635 P.2d 108 (1981).

Appellant asserts that an award of attorney fees is appropriate under the (1) common fund theory. Here, there will be a common fund eventually discovered which will yield a common fund of recovery. In addition, appellant asserts that the conduct of the Department of Licensing in this case is tantamount to bad faith. Appellant asserts that an award of attorney fees is appropriate under the (3) bad faith or misconduct of a party common fund theory. The State of Washington had a duty to defend RCW 10.92 and was derelict in not doing so, particularly when the consequence of its CR 19 motion is to defeat a lawsuit against the Department for breach of its own protocols and established constitutional laws in changing ownership to Certificate of Title of automobiles owned

by non tribal members based upon presentation of an Indian tribe of its order of forfeiture of the automobile. Although Washington has rejected the private attorney general theory as a basis for recovery of attorney fees in *Blue Sky Advocates v. State* 107 Wn2d 112, 122, 727 P.2d 644 (1986) in this case, appellant will advance the interests of state law, specifically force the Department to comply with CR 82.5 and, in addition, appellant will be catalyst to the resolution of how RCW 10.92 works against the efforts of the Department of Licensing and its lawyers.

#### VIII. CONCLUSION

The statutory language is clear and the insurers of the Swinomish Tribe ought to be attached and the case should proceed. There has been a limited waiver of the Swinomish Tribe's sovereign immunity to the extent that it has accepted the benefits of having its officers certified as Washington peace officers and has insured them.

Even if there was no waiver by the Tribe, tribal sovereign immunity does not protect individual police officers whose conduct caused the illegal seizure and forfeiture of plaintiff's vehicle, because they exceeded their authority whether acting as tribal officers or as Washington peace officers.

Finally, even if the court determines that immunity precludes all other relief requested, at a minimum the court should grant injunctive and declaratory relief so that the Department of Licensing ceases its practice of

transferring vehicle title based on void forfeiture judgments and award  
appellant costs and reasonable attorney fees.

Signed this <sup>24<sup>th</sup></sup> day of February, 2016 at Bellingham

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CANDEE WASHINGTON, and )  
all other persons similarly )  
situated, )

Plaintiff, )

vs )

Director of the Department of )  
Licensing, )  
a subdivision of the State of )  
Washington, in his/her official )  
Capacity and John and/or )  
Jane Doe, unidentified Swinomish )  
Tribal Police Officers and General )  
Authority Police Officers pursuant )  
To RCW 10.92 in their official )  
capacity and all tribal )  
police officers involved in the )  
seizure and forfeiture of )  
automobiles owned by non )  
Native Americans as individuals )

Defendants. )  
\_\_\_\_\_ )

No. 92084-2

APPENDICIES TO  
BRIEF OF APPELLANT

1. APPENDIX 1- A copy of the Swinomish Nation's Drug Code
2. APPENDIX 2- Paperwork Presented to Change Certificate of Title in Petitioner's 2007 Nissan Armada to Swinomish Indian Tribal Police Department;
3. APPENDIX 3- Email sent from Joe Kelly to Swinomish Nation Requesting Information and Response thereto
4. APPENDIX 4- A copy of letter from Department of Licensing acknowledging enforcing a tribal court order not in compliance with CR 82.5 violates protocols of Department of Licensing.

**Title 4 – Criminal Code**  
**Chapter 10 – Offenses Involving Controlled Substances**

<b>Sec.</b>	
4-10.010	Definitions
4-10.020	Controlled Substances That Are Illegal Without a Valid Prescription
4-10.030	Proof of Chemical Composition
4-10.040	Elements of Offense and Penalties
4-10.045	Medical Assistance for Drug-Related Overdose
4-10.050	Seizure of Vehicles Used in Controlled Substance Violations
	<i>Annotations</i>

**Legislative History**

**Enacted:**

Ordinance 324 Amending STC Title 4, Chapter 10 (5/7/13); BIA (5/10/13).  
Ordinance 206 Amending STC 4-10.050 and Ordinance 184, (12/18/03), BIA (12/30/03).  
Ordinance 184 Establishing The Swinomish Criminal Code and Repealing and Superseding Ordinance Nos. 156, 154, 143, and 75 (9/30/03), BIA (10/7/03).

**Repealed or superseded:**

Ordinance 75 Swinomish Criminal Code, (4/2/91), Enacting Res. 91-4-37, BIA (6/13/91) (repealing and superseding Ord. 39 and Article XIII of Ord. 32).  
Ordinance 39 Establishing Criminal Offenses, (6/7/77) (superseding conflicting provisions of Ord. 32).  
Ordinance 32 Swinomish Law and Order Code, (3/4/75), BIA (5/30/75).  
Ordinance 7 Swinomish Law and Order Code, (6/1/38), BIA (3/24/38).  
Ordinance 1 Adoption of Swinomish Law and Order Regulations, Ord. 1 (undated).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced "regulations" are not located in tribal records.]

**4-10.010 Definitions.**

All terms used in this Chapter shall be given their commonly accepted meaning or as defined in Section 4-01.040. If there is any doubt as to the meaning of a term, the court shall be guided by the definitions contained in RCW 69.50, et. seq., as currently in effect (copy attached) or as later amended. Nothing in this Chapter shall be construed to make illegal an act that is legal under the Uniform Controlled Substances Act.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91)..

**4-10.020 Controlled Substances That Are Illegal Without a Valid Prescription.**

- (A) Any substance that contains any quantity of a chemical that falls within the following categories is illegal to possess without a valid prescription:
- (1) Opiates including but not limited to substances commonly known as opium, heroin, morphine, methadone and codeine;
  - (2) Hallucinogenic substances including but not limited to substances commonly known as DMA, LSD, PCP, mescaline, peyote, and psilocybin;
  - (3) Marijuana;
  - (4) Cocaine in any form including but not limited to the powder and the rock or "crack" form;
  - (5) Depressants including but not limited to methaqualone, diazepam (Valium), secobarbital and pentobarbital; and
  - (6) Stimulants including but not limited to any form of amphetamine.
- (B) If there is any doubt as to whether a substance is illegal or not, the court shall be guided by the provisions of RCW 69.50, Schedule I through V, attached hereto.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-10.030 Proof of Chemical Composition.**

The chemical composition of a substance may be proven by any acceptable method of identification, including, but not limited to, identification by a trained officer, by certified field tests or by certified laboratory tests.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-10.040 Elements of Offense and Penalties.**

- (A) Possession of any amount of a substance listed in Section 4-10.020 is a Class B offense.
- (B) Any person who manufactures, delivers, or possesses with intent to deliver or manufacture any of the substances listed in Section 4-10.020 shall be found guilty of and sentenced for a Class A offense.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-10.045 Medical Assistance for Drug-Related Overdose**

- (A) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to STC 4-10.040(A) if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.
- (B) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to STC 4-10.040(A) if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.
- (C) A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose.
- (D) For the purposes of this section, "drug-related overdose" means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury.
- (E) The protection in this section from prosecution for possession of a controlled substance under STC 4-10.040(A) shall not be grounds for suppression of evidence in other criminal charges.

[History] Ord. 324 (5/7/13).

**4-10.050 Seizure of Vehicles Used in Controlled Substance Violations.**

- (A) **Forfeiture of interest.** The interest of the legal owner or owners of record of any vehicle used to transport unlawfully a controlled substance, or in which a controlled substance is unlawfully kept, deposited, used, or concealed, or in which a narcotic is unlawfully possessed by an occupant, shall be forfeited to the Swinomish Indian Tribal Community.
- (B) **Police officer to seize vehicle.** Any peace officer making or attempting to make an arrest for a violation of this Chapter may seize the vehicle used to transport unlawfully a controlled substance, or in which a controlled substance is unlawfully kept, deposited, used, or concealed, or unlawfully possessed by an occupant and shall immediately deliver the vehicle to the tribal police chief, to be held as evidence until forfeiture is declared or a release ordered.

- (C) **Police officer to file notice of seizure.** A peace officer who seizes a vehicle under the provisions of this Section shall file notice of seizure and intention to institute forfeiture proceedings with the clerk of the Tribal Court and the clerk shall serve notice thereof on all owners of the vehicle, by one of the following methods:
- (1) Upon an owner or claimant whose right, title or interest is of record in the division of motor vehicles of the state in which the automobile is licensed, by mailing a copy of the notice by registered mail to the address on the records of the division of motor vehicles of said state;
  - (2) Upon an owner or claimant whose name and address are known, by mailing a copy of the notice by registered mail to his last known address; or
  - (3) Upon an owner or claimant, whose address is unknown but who is believed to have an interest in the vehicle, by publication in one issue of a local newspaper of suitable size and general circulation.
- (D) **Owner's answer to notice.** Within twenty (20) days after the mailing or publication of a notice of seizure, as provided by Subsection (C) hereof, the owner of the seized vehicle may file a verified answer to the allegation of the use of the vehicle contained in the notice of seizure and of the intended forfeiture proceedings.
- (E) **Procedure for hearing.**
- (1) If a verified answer to the notice given as prescribed by this Section is not filed within twenty (20) days after the mailing or publication thereof, the court shall hear evidence upon the charge of unlawful use of the vehicle, and upon motion shall order the vehicle forfeited to the Swinomish Indian Tribal Community.
  - (2) If a verified answer is filed, the forfeiture proceedings shall be set for a hearing on a day not less than thirty (30) days after the answer is filed, and the proceedings shall have priority over other civil cases. Notice of the hearing shall be given in the manner provided for service of the notice of seizure.
  - (3) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the vehicle was not used to transport controlled substances illegally, or that a controlled substance was not unlawfully possessed by an occupant of the vehicle, or that the vehicle was not used as a depository or place of concealment for a controlled substance.
  - (4) A claimant of any right, title or interest in the vehicle may prove his or her lien, mortgage or conditional sales contract to be bona fide, and that his or her right, title, or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the vehicle was being, or was to be used for the purpose charged; but no person who has the lien dependent upon possession for the

compensation to which he or she is legally entitled for making repairs or performing labor upon and furnishing supplies and materials for, and for the storage, repairs, safekeeping of any vehicle, and no person doing business under any law of any state or the United States relating to banks, trust companies, credit unions or licensed pawnbrokers or money lenders or regularly engaged in the business of selling vehicles shall be required to prove that his or her right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the owner, purchaser, or person in possession of the vehicle when it was brought to the claimant.

(F) **Judgment.**

- (1) If proper proof is presented at the hearing, the Tribal Court shall order the vehicle released to the bona fide owner, lien holder, mortgagee or vendor, if the amount due him or her is equal to or in excess of the value of the vehicle as of the date of seizure, it being the purpose of this Section to forfeit only the right, title or interest of the purchaser.
- (2) If the amount due a claimant or claimants is less than the value of the vehicle, the vehicle shall be sold at public auction by the tribal police chief after due and proper notice has been given.
- (3) If no such claimant exists, and the confiscating agency wishes to retain the vehicle for its official use, it may do so. If such vehicle is not to be retained, it shall be disposed of as provided in Subsection 4-10.050(F)(2) of this Section.

[History] Ord. 206 (12/18/03); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**Annotations**

**STC 4-10.050**

**NOTES OF DECISIONS**

**Return of vehicle 1**

**1. Return of Vehicle**

Although the vehicle was seized pursuant to an arrest that involved possession of illegal drugs, the Court ordered the return of the vehicle to the owner because he was out of town when the arrest for possession and the vehicle seizure occurred, he did not give permission for use of the vehicle, and he was unaware that the occupants possessed illegal drugs during the time of the arrest. *In re: 1973 Black Chevy 2-Door Ell 2T*, Ci-8/95-041 (Swinomish Tribal Ct. November 8, 1995).

2. Burden of Proof

STC 4-10.050(E)(3) places the burden of proof on the vehicle owner or claimant to show that the grounds for forfeiture have not been met. *In Re: 1999 Ford Escort 500-VEX*, CVFF-2011-0013 (Swinomish Tribal Ct. July 18, 2011).

3. No Innocent Owner Defense

STC 4-10.050 does not provide for an innocent owner defense, and a vehicle owner is not able to escape vehicle forfeiture by claiming that he did not know the vehicle was being used to illegally transport, possess, deposit, or conceal a controlled substance. Although STC 4-10.050(E)(4) references a lack of knowledge, this section only applies to third party lien holders such as banks and financial institutions, and was designed to preserve their economic interest in seized vehicles. STC 4-10.050(E)(4) does not apply to vehicle owners who do not have a third party lien holder interest in the seized vehicle. *In Re: 1999 Ford Escort 500-VEX*, CVFF-2011-0013 (Swinomish Tribal Ct. July 18, 2011).

STATE OF WASHINGTON  
 DEPARTMENT OF LICENSING  
 PO Box 9038 - Olympia, Washington 98507-9038

**Vehicle Title Application/Registration Certificate**



06/24/2014

1417529120216755

105350

License plate 105350	Plate issue date 06/2014	Tab no	Reg expiration EXEMPT	Value code 34950	Year 2007	Mo reg	Mo gwt	Power G	Use EX
Model year 2007	Make NISS	Series/Body ARM4D	Model AR	BT UT	Vehicle identification (VIN)/Serial no 5N1AA08A17N708457	Res co 29	Prev plate	Scale wt 5327	
Seats	Gross weight	Gwt start	Gwt exp	Fleet	Equipment number	Prev Title 0		Prev st CA	
Brands:									
Comment: USE TAX WAIVED (G) - EXCISE EXEMPT NATIVE AMERICAN - COLOR-BLACK - DISPLAY TAB ON BACK LICENSE PLATE ONLY - FRONT PLATE IS STILL REQUIRED.									

Mileage 180000 A

Registered owner

SITC POLICE DEPT  
 17353 RESERVATION RD  
 LA CONNER WA 98257

Legal owner

07/16/2014  
 14:26  
 5659

I certify that the information contained hereon is accurate and complete.

Signature of registered owner(s)

X  
 Signature of registered owner(s)

Subscribed and sworn to before

Johnson 2712-28 this 24 day of June 14

FILING	\$7.00	TBD FEE	0	CHECK	
SUBAGENT	\$12.00	RTA EXCISE		CASH	\$62.25
LOCAL FEE		USE TAX		TOTAL FEES	\$62.25
LICENSE SRVC	\$0.75	OTHER	\$42.50		
GWT/VWT FEE		DONOR AWARENESS			
QUICK TITLE		STATE PARKS			

Validation code 28291202141750624140077021675

ORIGINAL

RPT ID: ATITPR-1  
 VehicleTitle (R/10/12)E

This document is not proof of ownership.

Appendix -2

**THIS DOCUMENT IS NOT PROOF OF LEGAL OWNERSHIP**

When validated, this document is your Washington registration certificate or permit and is evidence of the application filed and statutory fees paid. The original registration must be carried in the vehicle or vessel for which it was issued, or in the towing unit, or on the operator for personal motorized devices (off road vehicles, snowmobiles and jet skis). Registrations must be signed by the registered owner(s).

**NOTE: Rental vehicles are exempt from carrying the original. Ref. WAC 308-96A-180**

Any person who shall knowingly make any false statement of a material fact on this document shall be guilty of a felony which is punishable by a fine or imprisonment or both. (RCW 46.12.210)

**Change of address:** Registered owners may submit a change of address online at [www.InternetTabs.wa.gov](http://www.InternetTabs.wa.gov) or at any vehicle/vessel licensing office. There is no fee for this service; however, there is a fee for a new registration certificate. Washington State primary residence street address (for an individual) or Washington State principal place of business address (for a business) is required on your vehicle record per state rule. In addition to the physical address, vehicle owners may add an optional mailing address to the record. (WAC 308.56A.030)

**Report of sale:** Vehicle and vessel owners releasing interest must submit a report of sale to the Department of Licensing, county auditor, or vehicle licensing subagent within five (5) days of sale or release (excluding Saturdays, Sundays, and state or federal holidays). Reports of sale must include the date of sale, vehicle license plate (or vessel registration) number, vehicle identification number (or vessel hull identification number), names and addresses of both the seller and buyer, and sale price. You may submit a report of sale at [www.InternetTabs.wa.gov](http://www.InternetTabs.wa.gov) (at no fee), OR at any vehicle/vessel licensing office (for a fee). (RCW 46.12.101(1), RCW 46.12.102, WAC 308-56A-525)

**Federal odometer law:** The Federal Truth in Mileage Act of 1986 requires sellers of motor vehicles less than ten (10) years old to complete an odometer disclosure statement upon transfer of ownership, unless the vehicle is specifically exempt from odometer disclosure requirements. Exemptions are (1) Vehicles 10 years old and older; (2) non-powered vehicles and snowmobiles; (3) vehicles with a declared gross weight over 16,000 pounds; (4) vehicles sold directly by a manufacturer to a federal agency; (5) new vehicles before their first retail sale. (RCW 46.12.124, WAC 308-56A-640)

**Washington's auto repair law** (which applies to almost all repairs) entitles customers to: (1) A written estimate for repairs which will cost more than one hundred dollars (\$100), unless waived or absent face-to-face contact (see item 4 below). (2) Return or inspection of all replaced parts, if requested at time of repair authorization. (3) Authorize orally or in writing any repairs which exceed the estimated total presales tax cost by more than ten percent (10%). (4) Authorize any repairs orally or in writing if your vehicle is left with the repair facility without face-to-face contact between you and the repair facility personnel. (5) A copy of the invoice, listing all work done and parts supplied. The repair facility must post a sign notifying customers of their rights, and cannot put a lien against or keep your vehicle unless a written estimate was given and they have complied with the rest of the Consumer Protection Act. The Attorney General's office accepts auto repair complaints at [www.atg.wa.gov/consumer](http://www.atg.wa.gov/consumer). (RCW 46.71)

**Farm use class:** To qualify for reduced gross weight license fees, a vehicle must be used exclusively for transportation of farm or aquaculture products and/or supplies. (RCW 46.16.090)

The undersigned hereby transfers to the bearer all rights to fees paid for declared gross weight as shown on this form.  
Signature to transfer Gross Weight License \_\_\_\_\_  
**NOTE:** To transfer the Gross Weight License the credit must be at least \$15.00.

For more information about titling and licensing, call any Washington county auditor or any vehicle/vessel licensing office, or visit our website at [www.dol.wa.gov](http://www.dol.wa.gov).

**This document is not proof of legal ownership**

**Public disclosure statutes may compel the release of certain information contained on this document.**

**Vessel owners only:**

**How has the vessel registration changed?**  
In the lower left corner is a "mini registration" that can be cut out, signed, and carried as proof of registration. The full sheet can also be signed and used as proof of registration. Both the full sheet and the mini registration need to be signed for them to be valid.

**What do I do with them?**  
You can carry one in the towing vehicle and the other on the vessel.

**Do I have to cut out the mini registration?**  
No, you can keep it as one sheet. But it must be carried on the vessel and made available to law enforcement when requested.

**Can I laminate the mini registration?**  
Yes, but only after it has been signed by the registered owner(s). You can sign it on the back. (See signature lines to the right of this text).

X \_\_\_\_\_  
Signature of registered owner  
X \_\_\_\_\_  
Signature of registered owner

*We are committed to providing equal access to our services. If you need accommodation, please call (360) 902-3600 or TTY (360) 664-0116.*

# Vehicle Certificate of Ownership (Title) Application

Fees

Plate or TPO		Color #1	Color #2	Vehicle Identification Number (VIN) <b>5N1AA08A17N708457</b>			Filing	
Model year <b>2007</b>	Pwr <b>6</b>	Use <b>EXT</b>	Make <b>NISS</b>	Series/Body type <b>ARMUD</b>	Model ID	Value code	Year	Scale weight
Cycle engine or motor home number		Fleet code	Equip number	MO reg	Reg exp date	Scale weight	Seats	RTA excise tax
Declared GWT	Month GWT	GWT expiration	Mileage	Code	Previous title number	State	License	
Special options <input type="checkbox"/> DAV <input type="checkbox"/> Leased <input type="checkbox"/> No title issued <input type="checkbox"/> NRM <input type="checkbox"/> Bonded <input type="checkbox"/> Non-roadworthy <input type="checkbox"/> Native American <input type="checkbox"/> Reg only <input type="checkbox"/> Joint tenants with rights of survivorship			County of residence		Purchase price	Tax jurisdiction	Tax rate	Application
Washington State primary residence street address or Washington State principal place of business street address is required on the vehicle record. For exceptions to this rule, see form TD-420-001.			<input type="checkbox"/> <b>USE TAX EXEMPT:</b> Private automobile was purchased and used by me in another state for a minimum of 90 days while I was a bona fide resident, before I entered Washington on _____ (Must be used in Washington for personal and family transportation only.)		<input type="checkbox"/> <b>GIFT:</b> Donor previously paid Washington State sales/use tax.		Inspection	
			<input type="checkbox"/> <b>INHERITANCE:</b> Washington sales/use tax paid by testator.		<input type="checkbox"/> <b>Transferred to SPOUSE.</b>		VIN assignment	
			<input type="checkbox"/> <b>Sale to INDIAN IN INDIAN COUNTRY.</b> Notarized statement is attached.				Gross weight	
							GWT credit (attach proof)	
For more than two registered or legal owners, please attach additional applications.								Arbitration
<b>New registered owner</b> Name (Last, First, Middle initial) <b>SITC Police Dept</b>								Sales/Use tax
Name (Last, First, Middle initial)								License service
Washington State primary residence street address (if an individual) or Washington State principal place of business street address (if a business) <b>17353 Reservation Rd</b>								Plate
Address (continued) <b>La Conner, WA 98257</b>								LPG
Mailing address (if different than residence address) or exception address								Aquatic weed
First owner's Washington driver license, ID card, or UBI number 5660				Second owner's Washington driver license, ID card, or UBI number				Trauma
<b>New legal owner or lienholder - must be filled out if different than the registered owner</b>								Replacement tab
Name (Last, First, Middle initial) <b>SAME AS ABOVE</b>								State parks donation <input type="checkbox"/> \$5 <input type="checkbox"/> \$0
Name (Last, First, Middle initial)								Out of state
Address								Other
Address (continued)								Total fees and tax
First owner's Washington driver license, ID card, or UBI number 16/2014				Second owner's Washington driver license, ID card, or UBI number				
<b>Dealer's report of sale</b> I certify that this information is correct. The vehicle is clear of encumbrances except as shown. Any required sales tax has been collected.		WA dealer number	Dealer name			Date of sale		Subagent fee (Do not include in total)
		Date of delivery	Vehicle is: <input type="checkbox"/> New <input type="checkbox"/> Used <input type="checkbox"/> Previously titled			Dealer's authorized signature <b>X</b>		

Anyone who knowingly makes a false statement may be guilty of a felony under state law and upon conviction shall be punished by a fine, imprisonment, or both. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

6/24/14  
Date and place

[Signature]  
Registered owner signature

[Signature]  
Position, if signing for a business

\_\_\_\_\_  
Date and place

\_\_\_\_\_  
Registered owner signature

\_\_\_\_\_  
Position, if signing for a business

**Notarization/Certification for registered owner(s) signature**

State of WA County of Skagit

Signed or attested before me on 12-24-14 by [Signature]

(Seal or stamp)

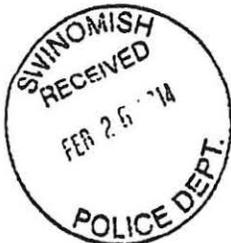
[Signature]  
Signature

Johnson  
Printed or stamped name

agent and \_\_\_\_\_  
Title

\_\_\_\_\_  
Dealer or county/office number or notary expiration date

PD



IN THE SWINOMISH TRIBAL COURT  
FOR THE SWINOMISH INDIAN TRIBAL COMMUNITY

SWINOMISH INDIAN TRIBAL  
COMMUNITY,

Plaintiff,

v.

2007 BLACK NISSAN ARMADA SUV  
VIN: 5N1AA08A17N708457  
R.O. CANDEE M. WASHINGTON,  
L.O. FUTURE NISSAN  
Defendant.

Case No.: CVFF-2014-0001

~~PROPOSED~~ ORDER GRANTING  
FORFEITURE

14-SP0055

2014 14:26

THIS MATTER comes on for hearing before the Court this 24th day of February, 2014.

Appearances were made as follows:

Jordan Wallace, Office of Tribal Attorney, appears for Plaintiff Swinomish Indian Tribal  
Community. Candee M. Washington for defendant.

The Court, having reviewed the filings of the parties, FINDS as follows:

1. Candee M. Washington is the registered legal owner of the vehicle sought to be  
forfeited in this matter, a 2007 BLACK NISSAN ARMADA SUV, VIN:  
5N1AA08A17N708457.

2. The vehicle sought to be forfeited contained occupants who unlawfully possessed  
heroin and its paraphernalia.

~~PROPOSED~~ ORDER GRANTING FORFEITURE -

Tribal Prosecutor, Swinomish Tribal Community  
11404 Moorage Way  
La Conner, WA 98257  
(360) 466-7371

SCANNED

2/26/14 BP

Dist. on p.2

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Based upon these Findings of undisputed fact, the Court CONCLUDES as follows:

1. Plaintiff is entitled to judgment as a matter of law.
2. The vehicle sought to be forfeited contained occupants who unlawfully possessed heroin and its paraphernalia.
3. Plaintiff's Motion for Forfeiture is GRANTED.

Based upon these Findings and Conclusions, it is hereby ORDERED, ADJUDGED and DECREED that judgment is entered in favor of Plaintiff and against Registered Owner, and that pursuant to STC 4-10.050, Registered Owner's 2007 BLACK NISSAN ARMADA SUV, VIN: 5N1AA08A17N708457, is hereby forfeited to the Plaintiff Swinomish Indian Tribal Community, which may retain the vehicle for its official use or dispose of the vehicle as provided by STC 4-10.050(F)(2).

DATED this 24 day of February, 2014.



THE HONORABLE JUDGE M. POULEY  
 TRIBAL COURT JUDGE  
 SWINOMISH INDIAN TRIBAL COMMUNITY

SUBMITTED this this 24 day of February, 2014.



JORDAN F. WALLACE, CVCO 2012-0052

PROSECUTING ATTORNEY  
 SWINOMISH INDIAN TRIBAL COMMUNITY

cc: 2/26/2014  Def. Cert.     
 Prosecutor  DS  Alcohol  Mail  
 Probation  Police  Court  
 YCO  SFS - Initial: BP

STATE OF WASHINGTON  
 DEPARTMENT OF LICENSING  
 PO Box 9038 - Olympia, Washington 98507-9038

**Vehicle Value Detail**

Vehicle identification number (VIN) 5N1AA08A17N708457	Model Year 2007	Make NISSAN			
Model ARMADA 4X2 UTILITY	Description 4dr SE 4x2	Engine size 5.6	Cylinders 8	Scale weight 5327	

FAIR MARKET VALUE: \$14,400

USE TAX ON FMV :

MILEAGE PROVIDED BY CUSTOMER:

VALUE DATA LAST UPDATED: 06/20/2014

Washington law, RCW 82.12.010, requires use tax be collected on fair market value of a vehicle. Fair market value reflects the value of a vehicle according to the retail selling price, at the place of use, of similar vehicles of like quality or character. Sales by individuals do not necessarily reflect fair market value.

Both Department of Licensing (DOL) and Department of Revenue (DOR) obtain fair market values, specific to the western region of the United States, from an industry standard source: National Market Reports (NMR). The actual value of your vehicle may vary depending upon its condition.

A fair market value may not have been established for some vehicles two years old and newer because they have not been resold often enough for an industry standard value to be established. In cases such as these, the original manufacturer's retail price (MSRP) is used to determine a taxable value.

Your local Department of Revenue or vehicle licensing representatives can provide you with more information for determining the value of your vehicle.

This information provided to you by: ANACORTES  
 CHAMBER OF COMMERCE  
 819 COMMERCIAL AVE, SUITE B  
 ANACORTES WA 98221

The estimated value of your vehicle is based on information provided on 06/24/2014 at 14:18 and is subject to change.

No deduction for high mileage was used in computing value.

Rpt ID: VHVALUEHRPT

VehicleValue (R/6/12)E

## THIS DOCUMENT IS NOT PROOF OF LEGAL OWNERSHIP

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**NOTE: Rental vehicles are exempt from carrying the original. Ref. WAC 308-96A-180**

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**Farm use class:** To qualify for reduced gross weight license fees, a vehicle must be used exclusively for transportation of farm or aquaculture products and/or supplies. (RCW 46.16.090)

The undersigned hereby transfers to the bearer all rights to fees paid for declared gross weight as shown on this form.

Signature to transfer Gross Weight License \_\_\_\_\_

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**Public disclosure statutes may compel the release of certain information contained on this document.**

### Vessel owners only:

#### How has the vessel registration changed?

In the lower left corner is a "mini registration" that can be cut out, signed, and carried as proof of registration. The full sheet can also be signed and used as proof of registration. Both the full sheet and the mini registration need to be signed for them to be valid.

#### What do I do with them?

You can carry one in the towing vehicle and the other on the vessel.

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No, you can keep it as one sheet. But it must be carried on the vessel and made available to law enforcement when requested.

#### Can I laminate the mini registration?

Yes, but only after it has been signed by the registered owner(s). You can sign it on the back. (See signature lines to the right of this text).

X

\_\_\_\_\_  
Signature of registered owner

X

\_\_\_\_\_  
Signature of registered owner

*We are committed to providing equal access to our services.*

*If you need accommodation, please call (360) 902-3600 or TTY (360) 664-0116.*



## Odometer Disclosure/Title Extension Statement Release of Interest

An Odometer Disclosure Statement is required on all ownership transfers of motor vehicles that are less than ten years old, except for:

- Vehicles with a declared gross weight of more than 16,000 pounds
- Non-powered vehicles
- Vehicles sold directly by a manufacturer to a federal agency when in conformity with contract specifications
- New vehicles before the first retail sale

This form is:

- valid only when submitted with the vehicle title or other approved ownership document during a title transfer.
- not a title application.
- not an ownership document.
- not valid if applicable sections are not completed.

### Instructions for completing this form

#### Section 1 – Vehicle Information

Enter the description of the vehicle, the state or country where the vehicle was last titled, and title number.

#### Section 2 – Disclosure by Registered Owner

Transferor/Seller: Print the current odometer reading and check one of the boxes which represents the accuracy of the odometer reading. You must record the date of transfer, sign the statement, and print your name and address.

Transferee/Buyer: Sign the statement and print your name and address.

#### Section 3 – Reassignment by Vehicle Dealer Only

Transferor/Seller: Print the current odometer reading and check one of the boxes which represents the accuracy of the odometer reading. You must record the date of transfer, sign the statement, and print your name, address, and dealer's license number.

Transferee/Buyer: Sign the statement and print your name, address, and dealer's license number.

#### Section 4 – Legal Owner/Lienholder

Print the name and address of the lienholder or legal owner to be shown on the new title.

#### Section 5 – Releasing Interest

Owners releasing interest on this form must have their signatures notarized/certified. Owners releasing interest on the title do not need to have their signatures notarized/certified if this form is submitted with the current title.

### Important information

- **Odometer Reading:** Enter the odometer reading in miles (do not include tenths of miles). If the odometer is in kilometers, convert to miles using the following formula: Kilometer X .621.  
(Example: 50,000 kilometers X .621 = 31,050 miles.)
- **Checkbox 2:** If the mileage the vehicle has traveled is greater than maximum number of miles the odometer can show, then the mileage has exceeded the odometer's mechanical limits. For example: If the odometer can register a maximum of 99,999 miles, but the vehicle has traveled 120,000 miles, the actual mileage is in excess of the odometer's mechanical limits.
- **Business Owners:** If the seller or buyer is a business, the business name and a representative's name and job title are required.
- **Out-of-State Title – Original Washington Application:** If there is no change of ownership, the registered owner must complete the odometer disclosure as "buyer/transferee" (it is considered a transfer of title/registration from one state to another). The registered owner may complete the Odometer Disclosure on the out-of-state title or on this form. Registered owner is not required to complete both unless the designated area on the title is already full.

Title 49 Code of Federal Regulations (CFR)

RCW 46.12.655

WAC 308-56A-640

This document is a part of a Washington Certificate of Title and should be attached to the title. Unauthorized printing or reproduction of this document is prohibited. If altered in any way, contact a vehicle licensing office.



# Vehicle/Vessel Declaration of Value for Excise Tax

## Vehicle/Vessel description

Model year 2007	Make NISSAN	Series/Body style ARMADA	License/Registration number	Vehicle/Vessel hull identification number (VIN/HIN) 5N1AA08A17N708457
Comments (describe conditions that may affect the value)				

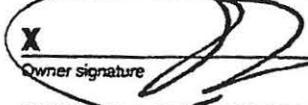
## Vessel-Declaration of original value

This declaration is for a vessel that:  was acquired by lease, trade, or gift.  
 has no known recent purchase price.  
 is homemade.

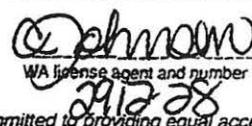
A. Declaration of fair market value of vessel ..... \$ \_\_\_\_\_  
B. Value of accessories (radio, depth finder, radar, etc.) ..... \$ \_\_\_\_\_  
C. Value of motor ..... \$ \_\_\_\_\_  
D. Total declaration of vessel value (A+B+C=total) ..... \$ \_\_\_\_\_

## Vehicle-Declaration of original value

This declaration is for a new, used, foreign, domestic, homemade, assembled, or other vehicle not listed in excise tax schedules or other sources available. I estimate, to the best of my ability, that the original value of this vehicle was \$ 7,000 in (year) 2014.

**X**  
  
Owner signature

  
Title if signing for an organization

 16-24-14  
WA license agent and number Date

RCW 82.49-050, WAC 308-57-030  
TD-420-737 (R/12/10)

We are committed to providing equal access to our services.  
If you need accommodation, please call (360) 902-3600 or TTY (360) 664-0116.

07/16/2014 14:26 5665



State of Washington  
 Department of Revenue  
 PO Box 47450  
 Olympia WA 98504-7450

## Use Tax Exemption Certificate for Vehicles Sold to Enrolled Tribal Members by Private Party

**Do Not Return This to the Department of Revenue**

When a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is sold to an enrolled tribal member and delivery is made on the enrolled tribal member's reservation/trust land in the state of Washington, the sale is exempt from use tax. To receive this exemption, this form must be completed. An original signed copy must be submitted to the Department of Licensing with title application. Copies of this form should be maintained by the buyer.

### Declaration of Buyer

#### Declaration of delivery or acquisition in Indian Country

The undersigned is:

- An enrolled member of the \_\_\_\_\_ Tribe
- An authorized representative of the Tribe or Tribal enterprise, and the vehicle described below was delivered/acquired within Indian country, for at least partial use in Indian country

Vehicle Description: 2007 Nissan Xterra SUV SN1A80PA17N708457

Buyer's name: Swinomish Tribal Com. / police dept

Buyer's signature: [Signature]

Buyer's address: 12353 Reservation Rd La Bander Wa. 98257

Address of delivery: \_\_\_\_\_

07/11/2014 14:26 5666

Check documentation presented:

- Certificate of enrollment
- Tribal membership card
- Treaty Indian Fishing Identification Card
- Official letter signed by Tribal official

For tax assistance or to request this document in an alternate format, please call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711.

1923 Association of ...

...  
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... / ...

... 1923 ...



# Certificate of Fact

Use this form to make a statement of fact.

License plate/Registration number 105350	Year 2007	Make NISSAN	Series/Body style ARM4D
Vehicle Identification Number (VIN) or Vessel Hull Identification Number (HIN) 5N1AA08A17N708457			
I certify that  PER DAN IN LIAISON ALL WE NEED IS A TITLE APPLICATION, ONE SIDED ODOMETER SIGNING AS BUYER AND A DECLARATION OF VALUE AND THE ORDER GRANTING FORFEITURE. WE HAVE TO DO WHAT THE COURTS SAY.			
I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.			
_____ Date and place		X _____ Signature	

07/16/2014 14:26 5667

### Notarization/Certification

State of WA County of Skagit

Signed or attested before me on 10-24-14 by \_\_\_\_\_

(Seal or stamp)

Signature [Handwritten Signature]

Printed or stamped name Johnson

Title Agent

and 211228  
Dealer or county/office number or notary expiration date

We are committed to providing equal access to our services.  
If you need accommodation, please call (360) 902-3600 or TTY (360) 864-0116.

Joe Kelly

Feb 24 (5 days ago)

to me

Bill,

Here is the response from Swinomish for my public records request.

Joe

----- Forwarded message -----

From: **Jordan E. Wallace** <[jwallace@swinomish.nsn.us](mailto:jwallace@swinomish.nsn.us)>

Date: Tue, Feb 24, 2015 at 11:25 AM

Subject: FW: Candee Washington

To: "joe@strategicsolutionswa.com" <[joe@strategicsolutionswa.com](mailto:joe@strategicsolutionswa.com)>

Cc: Ann Smock <[asmock@swinomish.nsn.us](mailto:asmock@swinomish.nsn.us)>

Joe –

I am an attorney for the Tribe. Ann Smock passed your request on to me.

The Tribe is not bound to the requirements of the Public Disclosure Act or the Freedom of Information Act. Any public requests for police reports must be taken for approval to a sub-committee of the Swinomish Indian Senate, although generally police reports are not available for distribution to the public.

Is there a specific question about the case you have? If you would still like to move forward with requesting a copy of the police report, make a request through Ann Smock and we will submit it to the appropriate committee.

Jordan

Jordan E. Wallace  
Tribal Prosecuting Attorney / Staff Attorney  
Swinomish Indian Tribal Community  
11404 Moorage Way  
La Conner, WA 98257  
Tel: 360-466-7371  
Fax: 360-466-5309  
E-mail: [JWallace@swinomish.nsn.us](mailto:JWallace@swinomish.nsn.us)

Please note, our office is open Monday-Thursday and closed on Fridays.

**From:** Ann Smock  
**Sent:** Tuesday, February 24, 2015 11:16 AM  
**To:** Jordan E. Wallace  
**Subject:** FW: Candee Washington

Appendix 3

*Ann Catherine Smock  
Swinomish Police Dept. Records  
17353 Reservation Road  
La Conner, WA 98257  
Desk: 360-466-7342 fax 360-466-7236*

**From:** Joe Kelly [<mailto:joe@strategicsolutionswa.com>]  
**Sent:** Monday, February 23, 2015 1:23 PM  
**To:** Ann Smock  
**Subject:** Candee Washington

Ann,

I would like to request a copy of 14-SP0055.

I am an investigator working for Attorney William Johnston.

We are working with Candee M. Washington. She was a non-tribal person involved in this incident.

--

Best Regards,  
Joe Kelly  
Strategic Solutions  
[www.strategicsolutionswa.com](http://www.strategicsolutionswa.com)  
[360-296-5707](tel:360-296-5707)

**william  
johnston**

Feb 25 (4 days ago)

----- Forwarded message ----- From: Joe Kelly <[joe@strategicsolutio...](mailto:joe@strategicsolutio...)>



**Joe Kelly**

Feb 26 (3 days ago)

to me

The official decline of my public records request to Swinomish is attached.

Joe

----- Forwarded message -----  
From: **Jordan E. Wallace** <[jwallace@swinomish.nsn.us](mailto:jwallace@swinomish.nsn.us)>  
Date: Thu, Feb 26, 2015 at 5:02 PM

Subject: RE: Candee Washington  
To: Joe Kelly <joe@strategicsolutionswa.com>  
Cc: Ann Smock <asmock@swinomish.nsn.us>

Joe –

Attached is the Tribe's response to your request.

Jordan

**From:** Joe Kelly [mailto:joe@strategicsolutionswa.com]  
**Sent:** Tuesday, February 24, 2015 11:53 AM  
**To:** Jordan E. Wallace  
**Cc:** Ann Smock  
**Subject:** Re: Candee Washington

Mr. Johnston has been retained by Ms. Washington. Ms. Washington is a suspect/witness in this case (14-SP0055). We are respectfully requesting a copy of the police reports in this matter to adequately represent our client.

On Tue, Feb 24, 2015 at 11:45 AM, Jordan E. Wallace <jwallace@swinomish.nsn.us> wrote:  
Ann/Joe –

If Joe decides to go forward with the request, the Committee will likely want more information as to why he is requesting the reports beyond what he provided in the e-mail.

Jordan

**From:** Ann Smock  
**Sent:** Tuesday, February 24, 2015 11:43 AM  
**To:** Jordan E. Wallace; joe@strategicsolutionswa.com  
**Subject:** RE: Candee Washington

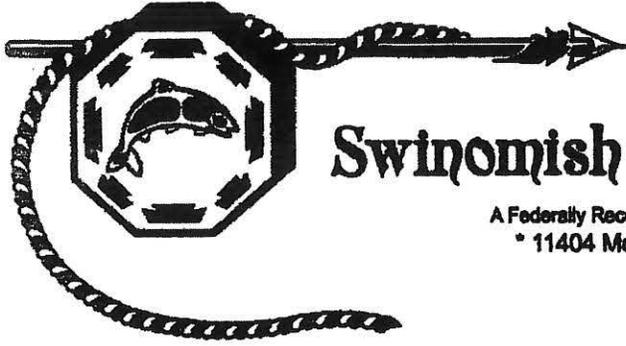
Jordan,  
His request is contained in the email I forwarded to you--

*Ann Catherine Smock  
Swinomish Police Dept. Records  
17353 Reservation Road  
La Conner, WA 98257  
Desk: 360-466-7342 fax 360-466-7236*

**From:** Jordan E. Wallace  
**Sent:** Tuesday, February 24, 2015 11:25 AM  
**To:** joe@strategicsolutionswa.com  
**Cc:** Ann Smock  
**Subject:** FW: Candee Washington

Attachments area

Preview attachment 20150226\_Resp2RecordsReq v4\_0.pdf



Main Office: 360.466.3163

Facsimile: 360.466.5309

# Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476  
\* 11404 Moorage Way \* La Conner, Washington 98257 \*

February 26, 2015

*Via e-mail:*

[joe@strategicsolutionswa.com](mailto:joe@strategicsolutionswa.com)

Dear Mr. Kelly:

You have requested records from the Swinomish Police Department. The Swinomish Police Department is an entity of the Swinomish Indian Tribal Community. The Freedom of Information Act does not apply to tribal governments. See 5 USC §551(a). Likewise, the Public Records Act does not apply to tribal governments. Attached is an Order to Show Cause by United States District Court Judge R. Martinez, which explains the lack of applicability of the Freedom of Information Act and the Public Records Act to the Swinomish Police Department.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jordan Wallace".

Jordan Wallace  
Tribal Attorney

Enc: Order to Show Cause, Michael Francis Moynihan, Jr. v. Swinomish Tribal Police Agency

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL FRANCIS MOYNIHAN, JR.,

Plaintiff,

v.

SWINOMISH TRIBAL POLICE AGENCY,

Defendant.

CASE NO. C10-0502 RSM  
ORDER TO SHOW CAUSE

Plaintiff, proceeding *pro se* and *in forma pauperis* ("IFP") has filed a Petition for Writ of Mandamus requesting that this Court order Defendant Swinomish Tribal Police Agency to comply with Plaintiff's request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Washington's Public Records Act ("PRA"), RCW 42.56.

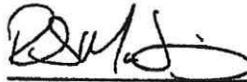
Pursuant to 28 U.S.C. § 1915(e), the district court must dismiss the case "at any time" if it determines the complaint fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2). Section 1915(e) applies to all IFP proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Additionally, this Court must dismiss a case if the Court determines at any time that it lacks subject matter jurisdiction. Fed. R. Civ. Proc. 12(h)(3).

1 Plaintiff's Petition contends that the Swinomish Tribal Police Agency must complete  
2 the FOIA and PRA request sent on November 3, 2009. However, the duties imposed by FOIA  
3 only apply to agencies of the federal government. 5 U.S.C. § 551(a). The duties imposed by  
4 the PRA only apply to Washington state agencies and local agencies within the state of  
5 Washington. RCW 42.56.010. Plaintiff's Petition does not allege that the Swinomish Tribal  
6 Police Agency is either a Washington state or federal agency. Indeed, it appears that a tribal  
7 police department is neither. Furthermore, if Defendant is not a federal agency and Plaintiff's  
8 FOIA claim is dismissed, this Court would lack subject matter jurisdiction over any PRA  
9 claim.

10 Accordingly, Plaintiff is ORDERED TO SHOW CAUSE within thirty (30) days of this  
11 order why his petition should not be dismissed for failure to state a claim and/or lack of subject  
12 matter jurisdiction.

13 The Clerk is directed to forward a copy of this Order to all counsel of record.

14  
15 DATED this 9<sup>th</sup> day of April, 2010.

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18 RICARDO S. MARTINEZ  
19 UNITED STATES DISTRICT JUDGE  
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Bob Ferguson

## ATTORNEY GENERAL OF WASHINGTON

Licensing & Administrative Law Division

PO Box 40110 • Olympia WA 98504-0110 • (360) 753-2702

December 31, 2014

William Johnston  
Attorney at Law  
401 Central Ave.  
Bellingham, WA 98225

RE: Your Letter and Enclosures Dated December 26, 2014

Dear Mr. Johnston:

Thank you for your letter dated December 26, 2014 addressed to Joshua Choate, Assistant Attorney General, Torts Division. The letter, along with your proposed summons and complaint and supporting documents, were all received by our office on December 29, 2014. These documents were forwarded to me because I am the Assistant Attorney General assigned to represent the Department of Licensing, Vehicle and Vessels program.

I have spoken with my client, the Department of Licensing, and asked them to look into the vehicle records for a blue 1999 Dodge Ram Pickup, listed under the registered owner, Mr. Curtiss Wilson, your client. As of today's date, the Department has taken no action on the basis of a Lummis Nation forfeiture notice and the vehicle remains titled in Mr. Wilson's name.

In addition, I have also investigated relevant and current Department policies. Under current Department forfeiture policy, the Department would only respond to a civil forfeiture notice issued by one of the following three categories of parties: (1) Washington city, county, or state agencies, including law enforcement, (2) the Internal Revenue Service (IRS), or (3) U.S. Customs and Border Protection (CBP). Tribal authorities are not mentioned in this list. The Department also has a current policy on court orders which adjudicate vehicle ownership. In order for the Department to accept a court order as proof of ownership sufficient for the Department to cancel and/or reissue a vehicle certificate of title, the document must be the final order issued by the court; documents indicating petitions or dismissals are regarded as insufficient. The Department also has guidelines relevant to two categories of courts: Washington courts and foreign courts. In the instance of court orders from foreign jurisdictions, either (1) the ownership document (i.e. certificate of title) and the court order must be from the

ATTORNEY GENERAL OF WASHINGTON

William Johnston, Esq.  
December 30, 2014  
Page 2

same jurisdiction, or (ii) the final court document must be filed with a Washington superior court clerk's office to be accepted by the Department.

Finally, you have notified us that your client has filed a civil lawsuit in Whatcom County Superior Court, naming the Department and other parties as defendants. Based on the proposed Summons and Complaint which you provided to us, my understanding is that in this lawsuit, you will contest the validity of the actions by the towing company and/or other parties when they transferred possession of your client's vehicle to the Lummi Nation. Because this lawsuit involves adjudication over possession and ownership rights of the vehicle, the Department is willing to freeze your client's vehicle record. This will have the effect of maintaining your client as the vehicle owner on the certificate of title until this civil lawsuit is resolved and ownership had been adjudicated via a final court order from this case. In the meantime, the Department would not take action on the basis of another party's application or demand for a certificate of title for your client's vehicle.

In exchange, per our phone conversation on December 31, 2014, I understand that you have agreed to dismiss your complaint against the Department in this lawsuit and will send me a copy of relevant dismissal documents.

I am glad we were able to amicably resolve your client's concern regarding the status of his vehicle documents with the Department, and I look forward to learning of the outcome of your case as you proceed against other parties. Should you have any further questions or concerns, please do not hesitate to contact me directly.

Best regards,



E. RANIA RAMPERSAD  
Assistant Attorney General  
Office Phone: (360) 586-2780  
Email: RaniaR@atg.wa.gov  
Fax: (360) 664-0174



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**  
Licensing & Administrative Law Division  
PO Box 40110 • Olympia WA 98504-0110 • (360) 753-2702

January 22, 2015

William Johnston  
Attorney at Law  
401 Central Ave.  
Bellingham, WA 98225

**RE: Your Fax and Enclosures Received January 22, 2015**

Dear Mr. Johnston:

Thank you for your fax which we received on January 22, 2015.

I understand you are concerned that the Department's policies—regarding vehicle civil forfeitures which I outlined in a previous letter—are not being followed or are being circumvented. I have made it a point to discuss your concerns with the Department so that they are aware of the issues your case raises. While the Department does its best to ensure policies are followed and circumvention is prevented, mistakes do occur. If you find evidence that an error has occurred in a particular case, or that errors are occurring routinely in any particular location, please do let me know. I will be happy to continue working with you to resolve future cases and improve enforcement of the Department's policies.

Best regards,

A handwritten signature in cursive script that reads "E. Rania Rampersad".

**E. RANIA RAMPERSAD**  
Assistant Attorney General  
Office Phone: (360) 586-2780  
Email: [RaniaR@atg.wa.gov](mailto:RaniaR@atg.wa.gov)  
Fax: (360) 664-0174