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STATE OF WASHINGTON

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IN RE: NO. 39392-1-II

STATE OF WASHINGTON

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

STATE OF WASHINGTON INC. ET. AL.,

Appellant,

v.

Marcus A. Carter,

Citizen / respondent.

IN RE: STATE'S APPEAL FROM DECISIONS OF THE
HONORABLE JUDGE ANNA M. LAURIE
OF THE SUPERIOR COURT OF KITSAP COUNTY,
STATE OF WASHINGTON
Superior Court No. 99-1-01367-9

CITIZEN'S SECOND FILED ANSWER

Marcus A. Carter - Citizen
By limited special appearance and under continuing protest
Reserving All Rights
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Holy Bible – The ultimate “authority” in print.	

ISSUE PRESENTED FOR REVIEW

Should this Court affirm the decision of the Honorable Judge Anna M. Laurie in dismissing this matter pursuant to RCW 9.41.190(2)?

YES.

INTRODUCTION

COMES NOW, AND AGAIN, Marcus Alton Carter, by special limited appearance, in propria persona, in sumo jure, jus regim and in continuing protest to the ongoing eleven year persecution of this citizen, yet, out of respect for this Court, files this second answer in this third appeal to the above listed cause.

This Citizen is not an attorney and does not act as a representative of himself, however, the responsibility of answering the plaintiff in support of a decision of the Honorable Judge Anna M. Laurie has been thrust upon him. This ANSWER will be in affidavit form.

While this Citizen will do his best to direct the Courts attention to the record before it, absent Appellant's proofs to the contrary in rebuttal of each statement, this affidavit shall stand as evidence and offer of proofs of the entire record from May 15th 1999 to the present date and currently in the files and elsewhere before the Superior Court of Kitsap County.

AFFIDAVIT

I, Marcus Alton Carter declare under penalty of perjury under the laws of the State of Washington that the following is my true affidavit and statement.

Be it known that I am reserving **ALL** rights, including the right to fully brief and argue, as individual issues, the unconstitutionality of the charging statute, violations of the statutes of limitation, violation of speedy trial, and etc.

STATEMENT OF THE CASE

(Every statement herein is supported by the record, and upon request, the Court can be directed to the documentation and/or evidence of record this Court deems necessary for authentication.)

In 1999, I was a federally licensed gunsmith, ammunition manufacturer, firearms instructor for civilians, law enforcement and military personnel, and inventor, respected, known and used by the United States military as well as the state and local law enforcement community, including the Kitsap County Prosecutor.

On Saturday May 15th 1999, the Pierce County Prosecutors Office Chief Criminal Investigator Bruce Jackson and another Investigator that works under Jackson, Frank Clark, were taking a class I was teaching at Kitsap Rifle & Revolver Club in Kitsap County in an effort they might become certified Rifle Marksmanship Instructors. Jackson, (found later to have a drug and alcohol problem leading to his arrest for DUI and soliciting prostitution while driving his county

issued vehicle, again leading to his subsequent administrative leave followed by permanent removal from his position), began an argumentative discussion in the class where he vehemently disagreed with me and claimed what I had said in an illustration was a "lie".

At the next break in the class, without permission he began disassembly of the subject rifle to the point it could not be reassembled as it was without removal of parts or special tools. After being told to return to his seat, Jackson began talking to Clark in an effort to convince him that the subject rifle was illegal and then about how to approach me about my rifle because of his invented concern it might be unlawful.

It should be noted here that Clark was a former US Marine and California Police Officer who testified he had handled many machine guns and had handled my rifle during the class and testified under oath in a 3.6 hearing that he had no concerns with my rifle outside of his bosses insistence, and that it did not operate like any other rifle he had handled. Jackson as well first testified that my rifle operated "just like" an M-16 military rifle and then under cross-examination testified that he had never operated anything like it and his conclusions were, at best, assumptions.

After the class that day, Jackson, armed with his own rifle, had Clark accompany him as he confronted me about my rifle, threatening that if I did not turn it over to them, they would throw me

face down in the dirt, disarm me, cuff me and have me placed in a patrol car and taken to jail to be booked.

Jackson had Clark call Kitsap County Cen-Com for "back-up" for which a Kitsap County Deputy was dispatched. On his way to the Kitsap Rifle and Revolver Club, the deputy spoke on the phone to his shift supervisor who told him specifically to NOT take my rifle, because of the licenses he knew I had. After arrival, Jackson consulted with the deputy, handed the rifle to the deputy, who after examination with commentary provided by Jackson, returned it to Jackson who in turn put the rifle in his private vehicle and drove it to his Pierce County Office where he placed it in his office (that according to Jackson in the 3.5/3.6 hearing had an unknown number of keys) that night so that he could personally further examine the rifle, though he admitted he was not a gunsmith, an armorer or ever had participated in any sort of firearms development program. Two days later he submitted it to the Pierce County Evidence Locker.

I was charged with unlawful possession of a firearm in November of 1999. After completion of the 3.5/3.6 hearing, The Honorable Judge Leonard W. Kruse dismissed this matter with prejudice and issued findings of fact and conclusions of law. This decision was upheld numerous times, but was overturned in a very political split decision fraught with mistakes and refusing to address overriding issues presented.

Once returned to the Superior Court, The Honorable Judge Leonard W. Costello dismissed the matter, again with prejudice, because in a light most favorable to the State, there does not exist the evidence to prove the rifle in question can be defined as a "machine gun", for which another appeal ensued. The dismissal was affirmed unanimously by this Court.

The State re-filed the same cause number without any legal standing and claimed it was under a different theory of the case. No new evidence was submitted and under protest, I submitted motions to dismiss. Judge Laurie eventually became the Judge of record and dismissed the cause once again based upon her analysis of one of my motions, the States argument and the undisputed facts of record. The present appeal is at bar.

THE STATE MISREPRESENTS THE FACTS

Rather than rely on findings of fact from the trial court, entered several times in this matter, the State relies on "facts" as recited by Justice Ireland, who was not legally capable of deciding issues of fact, and simply regurgitated the States statement of the case found in their appeal brief while ignoring the trial courts findings of fact. Many issues listed had not been tried and/or presented hearsay and hypothetical facts not in evidence.

THE STATUTE

RCW 9.41.190

Unlawful firearms — Exceptions.

(1) It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, short-barreled shotgun, or short-barreled rifle; or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle; or to assemble or repair any machine gun, short-barreled shotgun, or short-barreled rifle.

(2) This section shall not apply to:

(a) Any peace officer in the discharge of official duty or traveling to or from official duty, or to any officer or member of the armed forces of the United States or the state of Washington in the discharge of official duty or traveling to or from official duty; or

(b) **A person**, including an employee of such person if the employee has undergone fingerprinting and a background check, **who or which is exempt from or licensed under federal law, and engaged in the production, manufacture, repair, or testing of machine guns**, short-barreled shotguns, or short-barreled rifles:

(i) **To be used or purchased by the armed forces of the United States;**

(ii) **To be used or purchased by federal, state, county, or municipal law enforcement agencies;** or

(iii) For exportation in compliance with all applicable federal laws and regulations.

(3) It shall be an affirmative defense to a prosecution brought under this section that the machine gun, short-barreled shotgun, or short-barreled rifle was acquired prior to

July 1, 1994, and is possessed in compliance with federal law.

(4) Any person violating this section is guilty of a class C felony.

The bolded emphasis in 2(b)(i)(ii) added.

THE STATES MISCHARACTERIZES THE STATUTE

Arguendo and notwithstanding the many other issues extremely problematic to the State's case, the State engages in sedition by syntax as it pours out a thick smokescreen consisting of 28 pages obsessing with changing the language of the statute or twisting the reasoning of the trial court to sway this Court to their desired interpretation. Words and phrases like "**privately** possessed" or "government **owned**", neither of which are not a part of the statute, however, are used ad nauseam by the State in an attempt to thicken the smoke. The word "private" is found nowhere in the statute or in preceding statutes defining what would be a "privately possessed" firearm or how it would be relevant to this matter.

The State also attempts to interchange the word "used" with "owned", as in (i) and (ii) of the statute. The Plaintiff would have this Court read "owned by federal..." rather than the actual language of "used by federal...". The difference in the text is clear and distinct. It is an undisputed fact that my rifle was "used by" law enforcement and military, and that I was working on others "used by" the statutorily recognized agencies.

The State continually refers to my rifle as a machine gun when that is not a fact in evidence and the use of the term in this appeal is only used in an attempt to emotionally prejudice this Court.

Notwithstanding the issue argued presently, it would have been shown at trial that the State was forced to add a series of four parts to the rifle, (parts provided by the State), in order to begin to get it to function in the manner desired for the possibility of initiating prosecution under the statute.

FEDERAL AUTHORITY

The State continues the obfuscation further by claiming I possessed the incorrect federal license and attempts to entangle and argue issues of federal law. Plaintiff repeatedly, though mistakenly, contends that I needed a USC Title 26 license, as opposed to the Title 18 Licenses they acknowledge were valid at the time in question. The only difference in the two licenses are the legal authority to facilitate the **transfer of ownership** of machine guns for special tax collection purposes. Title 18 is entitled "Crimes and Criminal Procedure", whereas Title 26 is entitled "Internal Revenue Code", another telling aside.

The Plaintiff was challenged and has had ample time and opportunity (11 years) to produce a representative of BATFE (Bureau of Alcohol, Tobacco, Firearms and Explosives) to confirm their theory on improper licensure and yet could not. The record reflects that BATFE had been contacted on this matter by the State within the first few days after my rifle was taken and

was asked specifically if I could be in possession of a machine gun.
Their silence should be deafening.

Plaintiff also asserts with schizophrenic expertise that it is federally illegal for anyone to “privately” possess a machine gun, and then at the same time state that one must possess a license to “privately possess” a machine gun. Neither one has EVER been the case. Civilian machine gun ownership is today lawful, widespread and has never been illegal. At the federal level, the only regulation found to be constitutionally permissible on machine guns was for taxing purposes. In a standing decision, the US District Court in *United States v. Rock Island Armory, Inc.*, 773 F.Supp. 117 (C.D.Ill. 1991) held that while certain regulation on machine guns has been permissible, historically, courts have held that it was only so for taxing purposes, and that by removing the taxing authority, there would be no constitutional grounds for regulation of these arms whatsoever.

The last word in federal authority is found in the Constitution for the United States (CUSA) at Article II in amendment:

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

In *United States v. Miller*, 307 U.S. 174, 1939, the United States Supreme Court in fact explained clearly that the only firearm a citizen has a right to own is one suitable for military, or militia duty.

At the State level, Washington is the only State with a statute having the language as the one at bar. In every state surrounding Washington, it is perfectly legal for any upstanding adult to purchase, possess and utilize those types of firearms, and they do.

While it is crystal clear by any standards of logic that the charging statute is patently unconstitutional (both state and federal), I reserve the right to fully brief and argue that issue at another time.

JUDGE LAURIE'S MEMORANDUM

The opinion and order of The Honorable Judge Anna M. Laurie of Kitsap County speaks for itself quite eloquently and succinctly. Her Honor was privy to the entire record for this matter, a luxury I cannot afford to provide this Court. I invite and encourage this Court to exercise its privilege to sua sponte order up any part of the record if needed to confirm the *veritas* of this affidavit.

The trial courts Memorandum Opinion clearly brings time honored principles to light, supported by appropriate and standing *stare decisis*. Amongst those properly applied principles are that interpretation of the statutes relied upon for enforcement of our laws MUST be based upon a "plain language"¹ reading of the entirety of the charging statute, in this case, RCW 9.41.190.

STATE v. THORNTON, 119 Wn.2d 578, P.2d 216 (1992),
STATE v. RADAN, 98 Wn.App. 652 (1999), "Unambiguous

¹ State v. Hirschfelder, 148 Wn.App. 328, 337, 199 P.3d 1017 (2009)

language does not require nor permit judicial construction. "State v. McIntyre, 92 Wn.2d 620, 622, 600 P.2d 1009 (1979). "This court is bound to apply the plain language of the statute. State v. Smith, 117 Wn.2d 263, 270-71, 814 P.2d 652 (1991)

Our courts have also consistently held that people of average intelligence must be able read and understand the law so they may know what behavior is permissible (or forbidden).

"The concept of unconstitutional vagueness simply means that no prohibition can stand or penalty attach where an individual could not reasonably understand that his contemplated conduct is proscribed. UNITED STATES v. NATIONAL DAIRY PRODS. CORP., 372 U.S. 29, 9 L. Ed. 2d 561, 83 S. Ct. 594 (1963). An ordinance which forbids an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates the essential of due process of law - fair warning. STATE v. READER'S DIGEST ASS'N, 81 Wn.2d 259, 501 P.2d 290 (1972); SONITROL NORTHWEST, INC. v. SEATTLE, 84 Wn.2d 588, 528 P.2d 474 (1974); BELLEVUE v. MILLER, 85 Wn.2d 539, 536 P.2d 603 (1975). This principle requires that ordinances contain ascertainable standards for adjudication in order to limit arbitrary and discretionary enforcement of the law. BELLEVUE v. MILLER, SUPRA; STATE v. CARTER, 89 Wn.2d 236, 570 P.2d 1218 (1977)." GRANT COUNTY v. BOHNE, 89 Wn.2d 953, (1978)

Another principle held by our courts pertains to the assumption that the legislature knows what it is doing as it writes and/or changes the wording in a law, and that the changes are never done without reason and incorporates changes in the meaning.²

² Bob Pearson Const., Inc. v. First Community Bank of Washington, 111 Wn.App. 174, 43 P.3d 1261 (2002)

“Legislative intent is primarily revealed by the statutory language. *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).” *STATE v. MOSES*, 145 Wn.2d 370, 374 (2002)

Another, that the courts are bound by these principles regardless of their feelings as to whether the legislature was correct or made a mistake.³

“Where the Legislature omits language from a statute, intentionally or inadvertently, this court will not read into the statute the language that it believes was omitted. *Jenkins v. Bellingham Mun. Court*, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981).” *STATE v. MOSES*, 145 Wn.2d 370, 374 (2002)

And still yet another, that in proving the elements of a crime, the burden falls on the State to prove them beyond reasonable doubt.⁴

These issues and others are addressed clearly in the AMMENDED Memorandum Opinion.

CONCLUSION

I am at a loss to explain why we are here. The State has been saddled with the fact that fourteen times elected members of our judiciary, from the Superior Court to the Court of Appeals, to again the Supreme Court, have put pen to paper either dismissing this matter, or supporting dismissal, yet this prosecutor has been allowed to continue their “target practice” on this citizen. Is it a personal vendetta by the prosecutor to heal wounded pride and save face? Or is it a question of the potential liability incurred? Are

³ *State ex rel. Thigpen v. City of Kent*, 64 Wn.2d 823, 394 P.2d 686 (1964)

⁴ *State v. Acosta*, 101 Wn.2d 612, 615-616 (1984)

we sanctioning the “shopping for courts” method of juris prudence? Or perhaps, to use an argument from the prosecutor, this Citizen is simply a “conniver” and has just been too adept at manipulating the system. (Is it truly possible that 14 times elected members of the Washington State judiciary have been clueless about the same matter?)

For consideration in this matter, the undisputed material facts⁵ before Judge Laurie and this Court are:

MARCUS CARTER was a person who was licensed under federal law and engaged in the repair and testing of machine guns for use by the armed forces of the United States and county and municipal law enforcement agencies.

It doesn't take a rocket scientist, brain surgeon or someone with a triple Major in English, Law, and Logical Analysis to understand the plain language of the statute, the undisputed facts before the Court and therefore how it applies to the instant matter, but evidently it will take a continued effort on the part of our esteemed judiciary to put the plaintiff on notice by affirming the dismissal.

May I respectfully remind the Court that Judge Laurie's ONLY duty under the Law, enumerated so very clearly in Article I Section I of the Constitution for the State of Washington where the sole

⁵ State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986)

purpose in establishing our government is to protect the rights of that smallest of minorities, the individual. I was the only individual standing before her court. This individual is asking for continued and treasured specific performance on the contracts (Constitutions) he has with this Court by oath, and affirm The Honorable Judge Anna M. Laurie's decision in this matter.

I apologize for this unorthodox form of answer. No disrespect was intended.

I have served a copy of this to the Kitsap County Prosecutor as counsel for the plaintiff and should be evidenced by their stamp on the title page.

Signed and dated in Bremerton Washington on this 7th day of May, in the year of our Lord Jesus Christ, 2010.



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