

FILED
COURT OF APPEALS
DIVISION II

10 APR 16 PM 1:05

STATE OF WASHINGTON

BY Cm NO. 39973-3-II
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL FILIPPI,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable James Lawler, Judge

BRIEF OF APPELLANT

ROBERT WEPPNER
CHRISTOPHER H. GIBSON
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF FACTS</u>	3
1. <u>Procedural History</u>	3
2. <u>Substantive Facts</u>	4
a. <u>Preliminary Matter in District Court</u>	4
b. <u>CrR 3.6 Suppression Hearing</u>	5
c. <u>Trial</u>	10
i. <u>VUCSA</u>	10
ii. <u>Bail Jumping</u>	12
C. <u>ARGUMENT</u>	14
1. THE EVIDENCE PRODUCED BY THE UNLAWFUL SEARCHES OF FILIPPI'S ROOM SHOULD HAVE BEEN SUPPRESSED.....	14
a. <u>Filippi's Alleged "Consent" to the Officers' Initial Search of His Ammunition Box Was Involuntary, Coerced by the Officers' Misleading and Incorrect Statements Regarding their Legal Authority</u>	14
b. <u>Filippi's Admissions and the Subsequent Search of His Room Were Tainted by the Illegal Search That Preceded Them.</u>	20

TABLE OF CONTENTS (CONT'D)

	Page
2. INSTRUCTION 12 UNCONSTITUTIONALLY RELIEVED THE STATE OF ITS BURDEN TO PROVE EVERY ELEMENT OF BAIL JUMPING BEYOND A REASONABLE DOUBT.	23
3. THIS COURT MAY REACH THE ISSUES RAISED ABOVE FOR THE FIRST TIME ON APPEAL.....	26
4. FILIPPI WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.....	27
a. <u>The Standard for Effectiveness</u>	27
b. <u>Filippi's Counsel Was Ineffective in Failing to Properly Interpret the District Court Order that Provided the Entire Underpinning for the Officers' Search of Filippi's Possessions</u>	28
c. <u>Filippi's Counsel Was Ineffective by Failing to Object to Instruction 12 and For Not Moving to Dismiss the Bail Jumping Charge at the Close Of the State's Case</u>	29
D. <u>CONCLUSION</u>	33

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

Seymour v. Wash. D.O.H.
152 Wn. App. 156, 216 P.3d 1039 (2009)..... 17, 20

State v. Ball
97 Wn. App. 534, 987 P.2d 632 (1999)..... 24

State v. Bryant
89 Wn. App. 857, 950 P.2d 1004
review denied, 137 Wn.2d 1017, 978 P.2d 1100 (1998) 24, 25, 29-32

State v. Chrisman
100 Wn.2d 818, 676 P.2d 419 (1984)..... 15

State v. Downing
122 Wn. App. 185, 93 P.3d 900 (2004)..... 24

State v. Ferrier
136 Wn.2d 103, 960 P.2d 927 (1998)..... 8, 9, 16

State v. Flowers
57 Wn. App. 636, 789 P.2d 333 (1990)..... 16

State v. Fredrick
123 Wn. App. 347, 97 P.3d 47 (2004)..... 24, 32

State v. Gonzales
46 Wn. App. 388, 731 P.2d 1101 (1986)..... 22

State v. Green
94 Wn.2d 216, 616 P.2d 628 (1980)..... 33

State v. Harrington
167 Wn.2d 656, 222 P.3d 92 (2009)..... 22

State v. Hendrickson
129 Wn.2d 61, 971 P.2d 563 (1996)..... 15

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Jensen</u> 44 Wn. App. 485, 723 P.2d 443 (1986).....	22
<u>State v. O’Neill</u> 148 Wn.2d 564, 62 P.3d 489 (2003).....	17
<u>State v. Pope</u> 100 Wn. App. 624, 999 P.2d 51 <u>review denied</u> 141 Wn.2d 1018, 10 P.3d 1074 <u>review denied</u> , 141 Wn.2d 1019, 10 P.3d 1074 (2000)	24, 26
<u>State v. Reichenbach</u> 153 Wn.2d 126, 101 P.3d 80 (2004).....	16
<u>State v. Roberts</u> 88 Wn.2d 337, 562 P.2d 1259 (1977).....	26
<u>State v. Shoemaker</u> 85 Wn.2d 207, 533 P.2d 123 (1975).....	15
<u>State v. Sistrunk</u> 57 Wn. App. 210, 787 P.2d 937 (1990).....	21
<u>State v. Soto-Garcia</u> 68 Wn. App. 20, 841 P.2d 1271 (1992).....	21, 22
<u>State v. Thorn</u> 129 Wn.2d 347, 917 P.2d 108 (1996).....	21
<u>State v. Young</u> 123 Wn.2d 173, 867 P.2d 593 (1994).....	15
 <u>FEDERAL CASES</u>	
<u>Bumper v. North Carolina</u> 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968).....	16
<u>In re Winship</u> 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970).....	26

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>Jones v. Wood</u> 114 F.3d 1002 (9th Cir. 1997)	27
<u>McMann v. Richardson</u> 397 U.S. 759 (1970).....	27
<u>Nix v. Whiteside</u> 475 U.S. 157 (1986).....	28
<u>Schneekloth v. Bustamonte</u> 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).....	15
<u>Strickland v. Washington</u> 466 U.S. 668 (1984).....	27
<u>Taylor v. Alabama</u> 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982).....	22
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
18 U.S.C. 922.....	19
5 WAYNE R. LEFAVE, <i>SEARCH & SEIZURE</i> (4 th ed. 2004).....	17
CrR 3.6.....	i, 3, 5
RAP 2.5.....	26
RCW 9A.76.170	3, 24
RCW 9.41.040	18
RCW 9.41.800	18
RCW 10.99	4
RCW 69.50.4013	3

TABLE OF AUTHORITIES (CONT'D)

	Page
U.S Const. amend IV	2, 14, 26
U.S. Const. amend. VI	27
U.S. Const. amend. XIV	2, 23, 26, 27
Wash. Const. Art. I, § 7	14, 26
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976 ed.)	25

A. ASSIGNMENTS OF ERROR

1. Evidence and statements taken at appellant's home and thereafter were unconstitutionally seized without a warrant and without valid consent.

2. The trial court erred when it entered the following findings:

a. That the district court's "no contact" order forbade appellant from possessing firearms or ammunition (CP 23, finding of fact 1.3);

b. That appellant voluntarily consented to the searches of his possessions and room and that such searches were legal (CP 23-24, finding of fact 1.6, conclusion of law 2.4); and

c. That appellant voluntarily opened the ammunition box so that the officers could look inside (CP 23, finding of fact 1.10).

3. The trial court erred in giving jury Instruction 12. CP 41.

4. Appellant was denied his right to the effective assistance of counsel.

Issues Pertaining to Assignments of Error

1. Where officers misrepresented to appellant that he was forbidden by court order from possessing firearms or ammunition and, on that basis, demanded to search without a warrant any container large enough to contain the same, was appellant's consent to that search invalid?

2. Where officers initially found contraband as a result of the invalid search of appellant's ammunition box, should the trial court have suppressed statements subsequently made by appellant and evidence derived from the ensuing search of his room because they were the product of an unlawful search conducted in violation of appellant's rights under the Fourth Amendment and Article 1, Section 7 of the Washington Constitution?

3. Where the language of Instruction 12 permitted the jury to convict appellant without finding every element of the crime of bail jumping, did that instruction violate his right to due process under the Fourteenth Amendment?

4. Where there was insufficient proof in the State's case-in-chief on a charge of bail jumping that appellant had ever been told to appear in court on August 13, 2009, did his attorney fail to provide constitutionally effective assistance of counsel by neglecting to move for dismissal of the charge at the close of the State's case?

5. Where there was no district court order forbidding appellant from possessing firearms, was it ineffective assistance of counsel for his attorney not to challenge the prosecution's claim that there was?

B. STATEMENT OF FACTS

1. Procedural History

On April 13, 2009, the Lewis County Prosecuting Attorney charged appellant Michael Leo Filippi with one count of possession of a controlled substance. CP 67-68; RCW 69.50.4013(1). On April 23, 2009, trial was scheduled for the week of August 17, 2009, and a trial conference was calendared for August 13, 2009. Ex. 9.

Filippi's pretrial motion to suppress evidence was denied. CP 22-24. On August 20, 2009, the prosecutor filed an Amended Information adding a charge of bail jumping, alleging Filippi failed to appear on or about August 13, 2009. CP 48-49; RCW 9A.76.170.

The two charges were tried to a jury on November 4, 2009, before the Honorable James Lawler. 2RP 4.¹ The jury found Filippi guilty as charged. CP 25, 26; 2RP 103-05.

On November 5, 2009, Judge Lawler found Filippi was a first-time offender with no known felony criminal history and imposed concurrent sentences of thirty days incarceration, 24 months of community custody,

¹ There are three volume of verbatim report of proceeding referenced as follows: 1RP - June 22, 2009 (CrR 3.6 hearing); 2RP - November 4, 2009 (trial); and 3RP - November 5, 2009 (sentencing).

and various financial penalties and fees. CP 12-21; 3RP 7-8. Filippi appeals. CP 1-11.

2. Substantive Facts

a. Preliminary Matter in District Court

Sometime prior to April 11, 2009, Washington State Patrol Trooper Jason Hicks ("WSP Hicks") responded to a report that Filippi was barricaded in his house in possession of a firearm. Filippi came out of the house and was arrested for domestic violence, and Hicks and a county deputy observed several firearms in Filippi's closet. 2RP 6. In a Lewis County District Court proceeding on April 6, 2009, the court issued a "No Contact" order against Filippi. Ex. 1 at 3.6 Hearing ("3.6 Ex.").² Filippi was commanded to stay away from his housemate, Jeffery Alan Williams, who according to a box checked off by the court on the order with a clear "X" was an "other family or household member as defined in RCW 10.99." Id.; 2RP 52, 54. Filippi was to have no contact with Williams, nor come within 100 feet of their formerly shared residence in Morton.³ The court also clearly checked the box at paragraph 4 of the order where

² A copy of the district court's "no contact" order is attached as an Appendix.

³ The order was to have provided that Filippi maintain a distance of 200 feet, but the court struck the number "200," wrote in the number "100" above it, and initialed the change on the face of the order. 3.6 Ex., at 1.

the judge wrote that Filippi would be allowed to “return to above address one time w/police escort at police convenience to get necessary items.” 3.6 Ex., at 1.

At the top of the second page of the order is Paragraph 5, with the heading “**FIREARMS PROHIBITED** (check when applicable).” 3.6 Ex., at 2. While it appears from the order that the judge originally put an “X” in that box, as had been done on page 1 of the order regarding Williams’s status as a “family or household member”, it is further clear from the order that the marking was subsequently crossed out (striking the “No Firearms” restriction) and then -- as with the 100-foot distance change in paragraph 2 -- that change was judicially initialed. Id.

b. CrR 3.6 Suppression Hearing

A hearing on Filippi's motion to suppress the evidence seized from his room was held June 22, 2009. 1RP. WSP Hicks provided most of the State’s evidence. He testified that he and his wife, Morton Police Officer Tara Hicks (“MPD Hicks”), participated in a “civil standby” on April 11, 2009 for Filippi to pick up belongings from his house five days after the “no contact” order had been entered. 1RP 4, 5, 6. Filippi showed the Hickses a copy of the “no contact” order, and WSP Hicks interpreted it as

forbidding Filippi from possessing any type of firearm. 1RP 5-6, 24; cf. 3.6 Ex.⁴

Because of his involvement in Filippi's recent arrest, WSP Hicks "had previous knowledge" that Filippi had firearms that he was "going to have to seize based on that court order." 1RP 6. "[W]e were not going to violate a court order by allowing him to take a firearm. . . [because the court order] states firearms are prohibited for him." 1RP 17. When they met with Filippi at the Morton Police Department prior to the civil standby, the Hickses told him that he would not be allowed to remove from his residence anything large enough to conceal a firearm without letting them search it first. 1RP 6-7, 15. The only way to avoid a search of any item the officers deemed large enough to contain a firearm – or, apparently, ammunition – would be for Filippi to "just leave it in the house." 1RP 17. On this basis Filippi agreed to the proposed searches. 1RP 7.

The Hickses and Filippi went together to the residence, and as Filippi was opening the front door with a key, his roommate opened the door from the inside in response to MPD Hicks's knocks. 1RP 7, 25.

⁴ MPD Hicks testified that the order went even further, and also forbade Filippi to even possess ammunition. 1RP 24. WSP Hicks apparently agreed with this interpretation of the order, as he participated in the seizure of ammunition from the premises in the course of the officers' later search. 1RP 13.

Filippi and the officers went to Filippi's room, which was padlocked, and Filippi produced a key and unlocked the door. 1RP 7. WSP Hicks went straight to Filippi's closet, where he had seen Filippi's firearms just a few days before, and secured his rifles and shotguns. Filippi also helpfully pointed out a pistol on the top shelf of the closet. 1RP 7. The trooper gave the guns to MPD Hicks, who put them in the trunk of her patrol car. 1RP 6-7. At that point, WSP Hicks admitted that he had no knowledge of any other firearms in the house, but nonetheless speculated that there could be others. 1RP 18.

Filippi took "several" containers from his room that the officers searched. 1RP 8. He then pointed to a locked military ammunition can in his closet and indicated that he wanted to take it. 1RP 8-9; CP23.finding of fact 1.7. Filippi produced a key and unlocked the padlock on the box. 1RP 9. WSP Hicks was able to see that there was a "standard" prescription pill bottle right on the top of the box's contents. 1RP 9-10. WSP Hicks testified that he could see into the translucent or transparent bottle and that "obviously it didn't contain medication", but rather small plastic bags and a tube of some type that the officer "was almost certain" were methamphetamine and a meth pipe. 1RP 9. In addition to what he saw, WSP Hicks remembered that when he had recently arrested Filippi, he was in possession of a bag of methamphetamine. 1RP 18.

Despite his near-certainty, WSP Hicks asked Filippi what was in the bottle. Filippi said he did not know. The officer handcuffed Filippi at that point and read Filippi (who he said he was then only “detain[ing]” rather than arresting) his Miranda rights. Filippi then, according to WSP Hicks, verbally waived his rights and admitted that the bottle contained paraphernalia. 1RP 10, 20.

WSP Hicks testified that no decision had then been made to take Filippi into custody, and he was allowed to finish removing his (non-contraband) property from his room. 1RP 11. WSP Hicks asked for Filippi’s further consent to search the rest of his personal quarters and advised him of his Ferrier⁵ rights. 1RP 11-13. WSP Hicks testified that Filippi consented to the further search and at no time sought to limit it or stop it. 1RP 12, 14. The further search yielded “numerous items of paraphernalia. . .some snort draws. . .[perhaps] more bindles containing methamphetamine. . .a marijuana pipe. . .nothing major.” 1RP 13. Nonetheless, the police then placed Filippi under custodial arrest. Id. At the Morton Police Department Filippi gave a taped statement that

⁵ Under State v. Ferrier, 136 Wn.2d 103, 116, 960 P.2d 927 (1998), officers must provide a home dweller notice of the right to refuse a request by law enforcement to search the home without a warrant.

“admitt[ed] to owning everything we found and admitt[ed] to willingly giving us consent to search.” 1RP 14.⁶

Filippi testified that he agreed to the search procedures used by the officers because it was “the only way I was going to get any clothes or anything” else that he needed to live, and observed that he did not feel he had any choice in the matter, and had no right to turn the officers down in submitting everything taken out of the house to search. 1RP 30. Specifically, he felt he had to open the metal box that first yielded contraband if he wanted anything in it. 1RP 31. Filippi was concerned his roommate Williams would “steal [him] blind” now that he was out of the house. 1RP 32-33. When he was taken into custody a few days earlier, he testified, the officers did not lock up the door to his room when they took him away. 1RP 33. Filippi did not specifically remember being told he could limit the search under Ferrier; his main impression was “that if I wanted it, it was going to get searched.” 1RP 35-36.

The court denied the motion to suppress, observing that “the order is what starts all this prohibiting firearms.” Both officers “knew that condition was in there”. 1RP 44. Because of WSP Hicks’s prior knowledge of Filippi’s firearms, it would have been unreasonable for him to allow Filippi to take any container from his residence that could conceal

⁶ This taped statement was neither played nor admitted in evidence.

a firearm. 1RP 45. The court orally found that the officers told Filippi that “because of this condition on weapons and firearms, we’re going to need to look and make sure there aren’t any. . .” The court further found this request “reasonable” given “their experience [and] this order” and that it was reasonable for Filippi to consent to such a reasonable request. 1RP 45. Findings of fact, conclusions of law, and a written order denying Filippi’s motion to suppress were subsequently entered. CP 22-24.

c. Trial

i. VUCSA

The State’s proof as to how the officers came into possession of the paraphernalia and baggies with residue was virtually identical to its proof at the 3.6 hearing. WSP Hicks at first testified that there had been only one baggie in the prescription bottle containing a pipe-like object that he saw in the metal ammunition box from Filippi’s closet. 2RP 36-37. Later in his testimony, he appears to claim there were an unspecified plural number of bindles found in the ammunition box. 2RP 39. Also, the officers’ subsequent search of the rest of Filippi’s room led to the discovery of an indeterminate number of “more baggies.” 2RP 46-47. MPD Hicks’s testimony was clearer, that only one baggie had been found in the pill bottle in the metal ammo box, while all the others had been found in “different places throughout the room.” 2RP 28-29.

The parties stipulated to admissibility of the Crime Laboratory Report. CP 44. The report found that the “glass smoking device with plastic tubing at one end” contained methamphetamine residue. CP 45. WSP Hicks testified that this was the pipe found in the locked metal ammunition box in Filippi’s closet. 2RP 44. The report went on to say that of the residues in the six baggies submitted for analysis, but residue from only one of the baggies was found to contain methamphetamine. CP 45. It was not specified in the report or in testimony whether this baggie was the one from the pill bottle in the ammo box, or one that had been found in some other part of Filippi’s room.

Filippi testified that none of the paraphernalia or drugs were his, and he intimated that his roommate had planted it in his room because of the bad blood that had arisen between them. Filippi had caught his roommate stealing from him on previous occasions. 2RP 52-54. In fact, it was their confrontation over the thefts that had led to Filippi’s initial arrest. 2RP 54. When he had been arrested and taken to jail, the officers would not lock up his items for him. 2RP 59. The whole place was left wide open: “box, room, front door, back door, everything.” 2RP 55. Filippi testified further that not only had his roommate had the opportunity and access to go into his room after he was jailed, he in fact had done so according to friends who had walked by his house during that time. 2RP

54-55. Filippi eventually persuaded his ex-wife to go over to secure his possessions and lock up. 2RP 59.

WSP Hicks testified Filippi admitted that all of the paraphernalia found in his room was his. 2RP 48. Filippi testified he told the officer that none of it was his. However, the officer would not accept this statement, backing Filippi up against the wall, and “just kept on me,” accusing Filippi of “lying” and threatening to take him to jail if he didn’t “tell me the truth.” 2RP 56. Filippi – having already said they were not his – incredulously asked the officer “What, you want me to lie to you?” 2RP 56. When WSP Hicks said that was what he wanted, only then did Filippi say, “Yeah, they’re mine.” 2RP 56. “If that’s what you want to hear.” 2RP 58.

ii. Bail Jumping

In its case-in-chief the State introduced a copy of the original information, showing Filippi had been charged with a felony (Ex. 5; see CP 67), and a stipulation that the defendant was the same person who had signed the Order Setting Conditions of Release on April 13, 2009 (CP 46-47), including the information that he was admitted to \$5,000 bail and was to “return to court. . .as directed. . .” on penalty of being charged with bail jumping (Ex. 7; see CP 46-47). Also admitted were a copy of his appearance bond (Ex. 8), and a copy of the Notice of Trial Setting entered

April 23, 2009 showing a pretrial conference set for August 13, 2009 (Ex. 9). The prosecution adduced a copy of the clerk's minutes for August 13, 2009, bearing the handwritten notations that Filippi was not present, that a warrant would issue, and that the trial date of August 17, 2009 was stricken. Ex. 10. The parties entered into a stipulation, read to the jury, that Filippi was the same person who had been in court on April 13, 2009. CP 46-47; 2RP 50. The State put on no witnesses or testimony regarding the bail jumping charge.

In the defense case, Filippi testified that he didn't know he was supposed to be in court on August 13, 2009. 2RP 62. He had mislaid his paperwork and, in any event, could not "read and write very good" – "I can read a little but I don't understand what I read." RP 60, 62. He came to court voluntarily after learning from his attorney that he missed a court date. 2RP 60.

The "to convict" for the bail jumping charge identified as follows the necessary elements to be proven:

- (1) That on or about the 13th day of August, 2009, the defendant failed to appear before a court;
- (2) That the defendant was charged with a class C felony, to wit Possession of a Controlled Substance; [and]
- (3) That the defendant had been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before that court. . . .

CP 41 (Instruction 12). Defendant did not object to this instruction.

C. ARGUMENT

1. THE EVIDENCE PRODUCED BY THE UNLAWFUL SEARCHES OF FILIPPI'S ROOM SHOULD HAVE BEEN SUPPRESSED.

a. Filippi's Alleged "Consent" to the Officers' Initial Search of His Ammunition Box Was Involuntary, Coerced by the Officers' Misleading and Incorrect Statements Regarding their Legal Authority.

The arresting officers looked at Filippi's "no contact" order and advised him, incorrectly, that he was forbidden to possess firearms, and that because of this prohibition, they had the right to search any item he sought to recover from his residence that was large enough to contain a firearm. He capitulated to the officers' demands based on their representations, but those representations were at least false and at best mistaken. Any consent to the search of his ammunition box and other containers was therefore not knowing, intelligent, and voluntary, and the fruits of the searches should have been suppressed.

The Fourth Amendment to the United States Constitution provides that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." Even greater protection is provided by Article I, section 7 of the Washington State Constitution, which provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority

of law.” Under the authority of the state constitutional provision, analysis begins with the notion that “warrantless searches are unreasonable *per se*.” State v. Hendrickson, 129 Wn.2d 61, 70, 971 P.2d 563 (1996). This is an exacting examination, because “[t]he exceptions to the requirement of a warrant, including consent, are ‘jealously and carefully drawn.’” Id., at 72, quoting State v. Bradley, 105 Wn.2d 898, 902, 719 P.2d 546 (1986). “In no area is a citizen more entitled to his privacy than in his or her home. For this reason, ‘the closer officers come to intrusion into a dwelling, the greater the constitutional protection.’” State v. Young, 123 Wn.2d 173, 185, 867 P.2d 593 (1994)(citation omitted), quoting State v. Chrisman, 100 Wn.2d 818, 820, 676 P.2d 419 (1984).

Voluntariness of a consent to search is determined under the totality of the circumstances. State v. Shoemaker, 85 Wn.2d 207, 211-12, 533 P.2d 123 (1975), citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). In addition, our state Supreme Court has identified particular factors which should be considered, including “(1) whether Miranda warnings had been given prior to obtaining consent; (2) the degree of education and intelligence of the consenting person; and (3) whether the consenting person had been advised of his right not to consent.” Shoemaker, 85 Wn.2d at 212. The Court has identified such factors as “any express or implied claims of police authority to search,

previous illegal actions of the police, the defendant's cooperation, and police deception as to identity or purpose.” State v. Reichenbach, 153 Wn.2d 126, 132, 101 P.3d 80 (2004), citing State v. Flowers, 57 Wn. App. 636, 645, 789 P.2d 333 (1990). No one factor is dispositive. Id. Ultimately, the standard is that “the waiver of the right to require production of a warrant must, in the final analysis, be the product of an informed decision.” Ferrier, 136 Wn.2d at 118.

In Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968), the defendant lived with his grandmother. Two days after a rape committed with the use of a .22 rifle, four police officers showed up at the defendant’s house, finding his grandmother and some young children. One of the officers told her, “I have a warrant to search your house.” She responded “go ahead” and opened the door.⁷ In the kitchen the officers found the rifle used in the commission of the crime. Before trial the defendant moved to suppress the evidence, and the prosecutor justified the search by relying on the grandmother’s consent to the search of her house. Id., at 546. After defendant lost his motion to suppress at trial and on appeal he sought certiorari, and the Supreme Court framed the question as “whether a search can be justified as lawful on the

⁷ “He said he was the law and had a search warrant to search the house, why I thought he could go ahead. I believed he had a search warrant. I took him at his word.” Id., at 547.

basis of consent when that ‘consent’ has been given only after the official conducting the search has asserted that he possesses a warrant.” Id., at 548. They held that “there can be no consent under such circumstances.” Id.

The State’s burden of showing that the consent to a search was freely and voluntarily given cannot be discharged by “showing no more than acquiescence to a claim of lawful authority.” Id., at 549; State v. O’Neill, 148 Wn.2d 564, 589-90, 62 P.3d 489 (2003); see also Seymour v. Wash. D.O.H., 152 Wn. App. 156, 170, 216 P.3d 1039 (2009)(quoting “mere acquiescence to claim of authority” rule with approval). When there is such acquiescence, then, the question is not so much whether there is consent, but whether there is a legally sufficient basis for the lawful authority asserted. See 5 WAYNE R. LEFAVE, *SEARCH & SEIZURE*, §10.2(b), at 47 (4th ed. 2004)(claim of right to search pursuant to statute).

Under the circumstances of this case, it is plain that Filippi’s consent to the search of his locked box was involuntary. In the first place, the officers’ assertion that the “no contact” order against Filippi prohibited his possession of firearms and ammunition was simply wrong, and the trial court’s finding that the order so held was also wrong. The only direct evidence at the 3.6 hearing of the order’s meaning was the order itself. From the face of that document, it is apparent that the district court had at

first considered imposing, and had even marked, the “no firearms” restriction, but had then crossed that out and initialed the change.

At the superior court level, however, mere lack of attention to detail, or some sort of mass hallucination, apparently prevented anyone from noticing the limited scope of the no contact order. Instead, what might be called “ink action” in the vicinity of the box to be checked seemed all that was necessary to convince witnesses, attorneys⁸, and the court that the order contained a firearm ban.

Indirect evidence buttresses what should be obvious from the order itself, i.e., that it did not prohibit Filippi from possessing firearms. For example, in order to impose such a prohibition, the district court was bound to “specifically make[] findings pursuant to RCW 9.41.800” either that Filippi had used or displayed a firearm in the commission of a felony, or that he had previously been convicted of firearm-disqualifying offenses under RCW 9.41.040. 3.6 Ex., at 2. However, Filippi’s theretofore pristine record may be inferred from his treatment at sentencing as a first offender. 3RP 2, 7.

⁸ The prosecutor may have seen the order for what it actually did and did not say. In addressing WSP Hicks about the order, and to elicit his testimony about the supposed firearms restriction, he prompted the witness by phrasing his question: “Looking at that order, does that order in your mind tell you to do anything else?” 1RP 5 (emphasis added).

Furthermore, under the terms of the order, if the court had made the requisite “specific[] findings” that the defendant should be forbidden to possess firearms, the court was required to additionally order that the defendant “immediately surrender all firearms and other dangerous weapons” to a particular named and identified city or county police agency. 3.6 Ex., at 2. On the order imposed against Filippi, that directive is left blank and no such police agency is identified. This reinforces the inescapable conclusion that the district court did not place a firearms prohibition on Filippi.⁹

The officers advised Filippi that he was not allowed to possess firearms under the terms of the order. They went further to tell him that, because of the order, they had the right to search any containers that could contain firearms (or perhaps even ammunition, which would include very small containers indeed). As evidence of their right to seize his firearms, they in fact took custody of several guns that they readily found in his closet. Faced with these assertions, Filippi acquiesced to their demand

⁹ In the box on page 2 of the no contact order is language suggesting that federal law might have made Filippi ineligible to possess a firearm while the order was in effect, but the statute actually limits such a ban to situations where the no contact order is between intimate partners and their children – not the case here – and where the possession either itself is either “in or affecting commerce. . .” 18 U.S.C. 922(g)(8)(B), (C).

that he open the locked ammunition box in his closet. This bespoke not voluntary consent, but a fatalistic acceptance of the inevitable.

The State may try to argue that Filippi had the options of not participating in the civil standby procedure at all or of leaving items in his room that he did not want searched. This Hobson's choice does not render his consent voluntary. Filippi, barred from his residence, had to get his personal belongings just to move on with his life elsewhere, and it is unrealistic to posit that he could simply have done so without clothes, personal items, whatever he might have deemed the necessities of life. See Seymour, 152 Wn. App. at 171 (that physician could have refused administrative search and thereby courted potential career-threatening sanctions was not a genuine voluntary choice).

b. Filippi's Admissions and the Subsequent Search of His Room Were Tainted by the Illegal Search That Preceded Them.

After confronting Filippi with the paraphernalia and residue from inside his ammunition box, the police secured his further "consent" to perform a general search of his room, which turned up more contraband. In addition, he made incriminating statements admitting ownership of the contraband. All of this evidence should have been suppressed, as its discovery was tainted by the unconstitutional search of the ammunition box.

In State v. Sistrunk, 57 Wn. App. 210, 787 P.2d 937 (1990), the illegal search of defendant's automobile led to the discovery of a used syringe. After locating the syringe, the officer confronted the defendant with it, asked for permission to continue searching the vehicle. Because the syringe was found pursuant to an illegal search, and was used to obtain the defendant's consent to continue the search, the court held that consent was obtained by exploitation of the prior illegality. Id., at 213, 216.

In State v. Soto-Garcia, 68 Wn. App. 20, 841 P.2d 1271 (1992), abrogated on other grounds, State v. Thorn, 129 Wn.2d 347, 917 P.2d 108 (1996), the officer was driving on routine patrol in an area known for cocaine trafficking when he saw Soto-Garcia walk out of an alley. The officer pulled over and, of his own volition and unasked, Soto-Garcia walked over to the patrol car. The officer asked where he was coming from and where he was going, Soto-Garcia responded "appropriately," and then when the officer asked his name, Soto-Garcia produced his driver's license. Without walking away, the officer ran an ID check on the license that was apparently inconclusive. Without further preamble, he then asked Soto-Garcia if he had any cocaine on his person; Soto-Garcia denied it; the officer asked if he could search him; Soto-Garcia consented; and the officer reached into Soto-Garcia's pocket and found cocaine. Id., at 22.

The court found that Soto-Garcia had been “seized” when the officer asked if he had cocaine on his person and for consent to search him. Id., at 25. There was no probable cause or reasonable suspicion to support the stop or this seizure, and it was thus illegal. Because of that, Soto-Garcia’s subsequent apparent “consent” to search was “tainted by the prior illegality” even though the decision left undisturbed the trial court’s finding that the consent was freely and voluntarily given. Id., at 27, 29. See also State v. Harrington, 167 Wn.2d 656, 669, 222 P.3d 92 (2009). In so holding, the Court of Appeals assessed the following factors in determining whether the taint had dissipated: “(1) temporal proximity of the illegality and the subsequent consent, (2) the presence of significant intervening circumstances, (3) the purpose and flagrancy of the official misconduct, and (4) the giving of Miranda warnings.” See Taylor v. Alabama, 457 U.S. 687, 690, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982); State v. Gonzales, 46 Wn. App. 388, 397-99, 731 P.2d 1101 (1986). One factor, alone, is generally not dispositive. See e.g., State v. Jensen, 44 Wn. App. 485, 490, 723 P.2d 443 (1986)(temporal proximity, alone, is not dispositive).

Applying these tests here, the temporal proximity was immediate. There were no significant intervening circumstances. The official misconduct was flagrant – a gross misreading of a judicial order to mean

its opposite. And even though Miranda warnings were given, they could have had little effect on Filippi's fatalism in the face of what was transpiring by that point.

The search of Filippi's room would never have been undertaken at all if the officers had not been in the room with him to seize firearms they had no right to seize. Nor would they have searched had they not found paraphernalia in a box they had no right to demand be opened. There was no attenuation of the taint engendered by the earlier improper search, and all items seized from his room, and his admissions to the police, should have been suppressed.

2. INSTRUCTION 12 UNCONSTITUTIONALLY
RELIEVED THE STATE OF ITS BURDEN TO PROVE
EVERY ELEMENT OF BAIL JUMPING BEYOND A
REASONABLE DOUBT.

Instruction 12 – the “to convict” for the bail jumping charge – was facially confusing in that it permitted the jury to find Filippi guilty even if it was not convinced he ever had notice of the date of the court hearing he allegedly missed. Because it permitted conviction without proof beyond a reasonable doubt of every element of the crime, it violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

As did the language of Instruction 12, the cases all use the language of the statute – RCW 9A.76.170 – in holding that the elements of bail jumping are that the defendant “(1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance; and, (3) knowingly failed to appear as required.” State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 51, review denied 141 Wn.2d 1018, 10 P.3d 1074, review denied, 141 Wn.2d 1019, 10 P.3d 1074 (2000); State v. Downing, 122 Wn. App. 185, 192, 93 P.3d 900 (2004). The knowledge requirement is met when the State proves beyond reasonable doubt that the defendant had been given actual notice of the required court date missed. State v. Ball, 97 Wn. App. 534, 987 P.2d 632 (1999); State v. Fredrick, 123 Wn. App. 347, 97 P.3d 47 (2004). Proof of actual knowledge is crucial, as bail jumping is “not a per se offense.” State v. Bryant, 89 Wn. App. 857, 870, 950 P.2d 1004, review denied, 137 Wn.2d 1017, 978 P.2d 1100 (1998).

The problem with Instruction 12 was that it invited the jury to convict Filippi despite the State’s shoddy and incomplete proof of the elements of the offense. See Argument 4(c), infra. This is because – to paraphrase a former President – it depends on what the definition of “a” is. Webster’s defines it as “used as a function word before most singular

nouns. . .when the individual in question is **undetermined, unidentified, or unspecified.** . . .” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY at p. 1 (1976 ed.)(emphasis added). Instruction 12 by its terms requires only that the State show that Filippi “had been released. . .with knowledge of the requirement of **a subsequent personal appearance.** . . .” CP 41 (emphasis added). The jury could, on the evidence shown, have readily found that Filippi was in court on April 13 as he admitted in the parties’ Stipulation Regarding Identity of Defendant. CP 46-47. The April 13th Order Setting Conditions of Release indeed provided for “**a subsequent personal appearance**” – on April 23, 2009 at 2:15 p.m. See CP 47. The jury may have gone on to reason that he would remember this date, set only ten days later, his memory perhaps further strengthened by his promise to pay \$5,000 for any failure to appear. See Ex. 8; cf. Bryant, supra. Upon that proof, and that proof alone, they could then have convicted him of failing to appear on August 13, 2009, without ever even pausing to consider whether he ever had specific knowledge that he was to appear on that date. For that reason, Instruction 12 is defective in that it does not state that knowledge of the requirement to appear on the specific date of non-appearance (as opposed to some date that is “undetermined, unidentified, or unspecified”), which is an element of bail jumping. A “to convict” bail jumping instruction that omits a necessary

element of the offense is per se reversible error. See State v. Pope, supra (omitted element that underlying crime was a B or C felony).

3. THIS COURT MAY REACH THE ISSUES RAISED ABOVE FOR THE FIRST TIME ON APPEAL.

RAP 2.5(a)(3) allows a party to raise for the first time on appeal “manifest error affecting a constitutional right.” The issues raised above involve “manifest error affecting a constitutional right.”

The right to be free from unreasonable searches and seizures is protected by the Fourth Amendment to the United States Constitution and by Article 1, section 7 of the Washington State Constitution. The police reliance on a non-existent right to condition Filippi’s possession of his own property on their search of it, and to seize his firearms generally, violates both constitutional provisions.

A defendant is entitled to proof beyond a reasonable doubt of every element of the crime charged. State v. Roberts, 88 Wn.2d 337, 340, 562 P.2d 1259 (1977), citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970). Instruction 12 invited the jury to convict Filippi of bail jumping even if they did not find that he had knowledge at any time of the requirement that he appear in court on August 13. It therefore manifestly violated the Due Process Clause of the Fourteenth Amendment. Winship, supra.

Filippi's challenges to the admissibility of the evidence and statements used against him at trial and the to-convict instruction for bail jumping are properly before this Court.

4. FILIPPI WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

a. The Standard for Effectiveness.

The assistance of competent counsel is an essential constitutional right. U.S. Const. amends. VI, XIV. That right extends beyond counsel's mere appointment and "envisions counsel playing a role that is critical to the ability of the adversarial system to produce just results [and] ensure that the trial is fair. . .[It is] the right to the *effective* assistance of counsel." Strickland v. Washington, 466 U.S. 668, 685-86 (1984)(emphasis added), quoting McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970). A criminal defendant has not received effective assistance of counsel where counsel's representation falls below an objective standard of reasonableness and the deficiencies in counsel's performance prejudice the defense. Strickland, 466 U.S. at 687, 688, 692; see also Jones v. Wood, 114 F.3d 1002, 1010 (9th Cir. 1997). The ultimate question the court must address is whether counsel's shortfalls so upset the adversarial balance between state and defendant as to render the

trial unfair and the verdict suspect. See Nix v. Whiteside, 475 U.S. 157, 175 (1986).

Here, Filippi's trial attorney was ineffective by failing to challenge the indefensible assertion by the State that the no-contact order included a prohibition against possessing firearms and by failed to seek dismissal of the bail jumping charge at the conclusion of the State case-in-chief. Filippi was prejudiced by his counsel's failure and therefore reversal is required.

- b. Filippi's Counsel Was Ineffective in Failing to Properly Interpret the District Court Order that Provided the Entire Underpinning for the Officers' Search of Filippi's Possessions.

As noted above, the district court's order in the "no contact" proceeding did not preclude Filippi from possessing firearms, and this was apparent from even a cursory inspection of the document. See Appendix. Yet counsel never raised this point, but instead accepted police and State representations as to what the order said. Indeed, it cannot even be told from the record whether counsel ever even looked at the order in question, much less raised the issue before the trial court. Since it was this order upon which police justified their intrusion into Filippi's house, seizure of his firearms, and search of his possessions, and since it was on their assertion of its import to Filippi that his "consent" to the searches was

based, this was not even remotely effective lawyering, and Filippi was plainly prejudiced as a result.

c. Filippi's Counsel Was Ineffective by Failing to Object to Instruction 12 and For Not Moving to Dismiss the Bail Jumping Charge at the Close Of the State's Case.

There was insufficient evidence in the State's case-in-chief to support the charge of bail jumping, and defense counsel should have moved for dismissal of that charge at the close of the prosecution's evidence. Additionally, the bail jumping "to convict" instruction -- Instruction 12 -- was so confusing as to what the jury needed to find that counsel should have objected to it as well. See Argument 2, supra. That he did neither of these involve more instances of the ineffectiveness of Filippi's trial counsel.

Because the burden of proof beyond a reasonable doubt is a heavy one, the State's proof in such cases tends to be punctilious. For example, in Bryant, the State proved that on December 2 Bryant had received written notice and verbal notice that he was supposed to be in court six days later on the 8th. 89 Wn. App. at 870. This was held to be sufficient evidence to satisfy the "knowingly" element over Bryant's protests that there was no direct proof that, as of December 8th, he then knew of the

requirement to appear, and thus no proof that he had knowingly failed to do so. Id.

Compared to the standard of proof in Bryant, the State's case here fell woefully short of sufficient evidence. The sum total of evidence on the bail jumping count consisted of Exhibits 5-10 and the Stipulation Regarding Identity of the Defendant. CP 46-47. The stipulation proved that the defendant Michael Filippi on trial before the jury below was the same Michael Filippi who had appeared in court on April 13, 2009, and signed the Order Setting Conditions of Release of that date. That order included the notation that Filippi was to return to court "as directed and on: 4-23-09." CP 48. Exhibit 9 consisted of a certified copy of the court's Notice of Trial Setting dated April 23, 2009. On it is written, among other things, "Other: TC: 8-13-09 @ 2:15 pm." Ex. 9. There is a signature above the space for the "defendant" that bears what may be Filippi's name scrawled in a script that is not dissimilar from the scrawl on the April 13 order. Exhibit 10 is a certified copy of the clerk's minutes from the criminal calendar for August 13, 2009, bearing the handwritten notations "not pres" next to Filippi's name, "No Information from [defense counsel] as to where def. is" and "warrant to issue." There is no indication whatsoever whether the criminal calendar was called at 2:15; at 4:15 when Exhibit 10 was apparently prepared; or at some other time.

This evidence is plainly below the standard approved in Bryant, in at least the following respects. First, the stipulation shows Filippi was in court on April 13. It does not show that he was in court on April 23. It was on April 23 that the court set the trial conference for August 13. Although it may be a reasonable inference that there was apparently some warm body in court on April 23, there is no cogent proof that it was Filippi.

And even if it were a reasonable inference that it was Filippi who was in court on April 23 and who signed the Notice of Trial Setting on April 23, there is no showing whatsoever, except by piling inference upon inference, that Filippi ever received written notice of a court hearing he was supposed to attend almost four months later on August 13. In the first place, that hearing is not even identified as a court hearing at all, but only as a "T.C.", whatever that might mean; all one can tell from the face of the document is that it is an "Other" of some kind. Secondly, even assuming Filippi signed it and that it adequately identifies a hearing he must attend, there is no showing that the document was completely filled in, and not wholly or partially blank, when he affixed his signature; there is not even a showing of what the court's ordinary and customary practices may or may not have been in this regard. Thirdly, further weakening the above assumptions, there is no showing Filippi can read or write, surely a

necessary prerequisite to understanding a written order to appear in court.¹⁰ In the fourth place, there is no evidence – no testimony, no transcript, no audio recording, nothing – that shows Filippi was verbally told on April 13 that he had to be in court on April 23, or on April 23 that he had to be in court on August 13 at 2:15. Furthermore, there is no direct evidence that Filippi was in fact not in court at 2:15 pm on August 13, as he had allegedly been ordered to be, but only that at “some” time prior to, apparently, 4:15 pm, he was not present.

Finally, the State adduced no proof whatsoever that Filippi, on August 13 at 2:15, or, indeed, at any time on that date, had knowledge that he was supposed to then be in court, and knowingly failed to appear.¹¹ In Bryant, proof of this element was found satisfied inferentially when there had been only a six-day hiatus, as opposed to the nearly four-month gap here, and Bryant had put up some \$20,000 in bail. In Fredrick, the knowledge element on the date of the offense was held inferable from the showing that the defendant called his attorney two days after the missed

¹⁰ In the defense case, Filippi testified that, in fact, he was unable to read or write. 2RP 59. This evidence went unchallenged.

¹¹ In the defense case, Filippi testified that he did not remember the date he was supposed to be in court. 2RP 59, 60, 62. This testimony went un rebutted.

hearing. Frederick, 123 Wn. App. at 355. Here, it was defense counsel who had to call Filippi. 2RP 60.

This case is different. Even with all inferences taken in favor of the State and against Filippi, the State simply did not adduce sufficient proof of notice and knowledge from which a rational trier of fact could have found Filippi's guilt of bail-jumping on August 13, 2009, beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Counsel's failure to move for dismissal at the close of the State's evidence constituted prejudicially ineffective assistance.

D. CONCLUSION

The police pried an initial consent to search his belongings from Filippi by wrongly asserting the no-contact order prohibited him from possessing firearms. Thus, Filippi's consent was invalid and the resulting search illegal. The fruits of that search therefore should have been suppressed. Filippi's subsequent consent to search his room, and his associated inculpatory statements, were the product of the initial illegality, and should have been suppressed as well. Filippi's drug conviction should therefore be reversed.

The bail jumping "to convict" instruction was flawed in that it allowed conviction of bail jumping without proof of all the elements of

that offense. This alone warrants reversal of Filippi's bail jumping conviction.

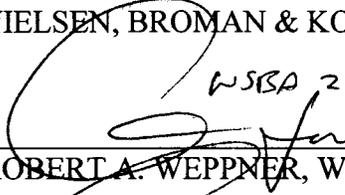
Finally, Filippi's trial counsel's performance was deficient for failing to raise the above issue at trial, and Filippi was prejudice as a result. Therefore, the judgment and sentence against Filippi should be reversed in it entirety.

DATED THIS 15th day of April, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH., PLLC

WSBA 25097


ROBERT A. WEPPNER, WSBA 11556


CHRISTOPHER GIBSON, WSBA 25097
Office ID No. 91051

Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 39973-3-II
)	
MICHAEL FILIPPI,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 15TH DAY OF APRIL 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] LIAM GOLDEN
LEWIS COUNTY PROSECUTOR'S OFFICE
345 W. MAIN STREET
FLOOR 2
CHEHALIS, WA 98532

- [X] MICHAEL FILIPPI
LEWIS COUNTY JAIL
345 W. MAIN STREET
CHEHALIS, WA 98532

SIGNED IN SEATTLE WASHINGTON, THIS 15TH DAY OF APRIL 2010.

x *Patrick Mayovsky*

FILED
COURT OF APPEALS
10 APR 16 PM 1:05
STATE OF WASHINGTON
BY *Deputy*
DEPUTY

①

In the District Court of the State of Washington for Lewis County

State of Washington,
City of _____,
Plaintiff,

Cause No. C87d9

vs.

Pretrial "No Contact" Order
as Condition of Release on a
Charge Involving Domestic
Violence
(RCW 10.99.040 and 10.99.045)

FILED IN COURT ROOM
APR - 6 2009
WIS Court

Michael L. Filippi
Defendant.

Defendant DOB: 2-16-55 Male Female Hgt: 5'8" Wgt: 150 Eyes: Br Hair: Bl

Based upon the certificate of probable cause and/or other documents contained in the case record, testimony, and the statements of counsel, the court finds that the defendant has been charged with a domestic violence offense, finds probable cause to believe a crime has been committed, and further finds that to prevent possible recurrence of violence, this Domestic Violence No-Contact Order shall be entered pursuant to chapter 10.99 RCW. This order protects (Name):

Jeffery Allen Williams

The court further finds that the defendant's alleged relationship to the person(s) protected by this order is: current or former spouse parent of a common child current or former cohabitant as intimate partner other family or household member as defined in RCW 10.99.

NOW, THEREFORE, as a condition of the Defendant's release from custody upon bail or personal recognizance, it is **HEREBY ORDERED** that:

1. The Defendant shall have no contact with the protected person, to wit: Jeffery Allen Williams, DOB: 5-28-68, by mail, telephone, or any other method of communication including e-mail, text messaging, and voice messaging, either in person or through any other person except legal counsel;

2. The Defendant shall not enter onto, or knowingly remain on, or knowingly come within 100 feet of the property where the protected person resides at:

249 Division Ave Morton WA 98356

Or enter into or be within _____ feet of the protected person's place of employment at:

3. The Defendant is prohibited from causing or attempting to cause physical harm or bodily injury, and from assaulting, molesting, harassing, threatening, or stalking the protected person(s).

4. **Other conditions** (check when applicable):

May return to above address one time w/ police escort at police convenience to get personal items.

cc Δ
JAIL
Prot A

5. **FIREARMS PROHIBITED** (check when applicable)

The Court specifically makes findings pursuant to RCW 9.41.800 that the Defendant has used or displayed a firearm in the commission of a felony, or that the Defendant has been previously convicted of offenses under RCW 9.41.040 making her/him ineligible to possess firearms and therefore orders that the defendant shall immediately surrender all firearms and other dangerous weapons within the defendant's possession and control to the:

_____ County Sheriff Police Department, and Defendant is prohibited from obtaining or possessing a firearm, other dangerous weapon, or concealed firearm license.

WARNINGS TO THE DEFENDANT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

Willful violation of this order is punishable under RCW 26.50.110. Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if the defendant has at least 2 previous convictions for violating a protection order issued under Titles 10, 26 or 74.

If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. sections 2261, 2261A, or 2262.

In addition to the state and federal prohibitions against possessing a firearm upon conviction of a misdemeanor, upon the court issuing a no-contact order after a hearing at which the defendant had an opportunity to participate, the defendant may not possess a firearm or ammunition for as long as the no-contact order is in effect. 18 U.S.C. section 922(g). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. section 925(a)(1). If the defendant is convicted of an offense of domestic violence, the defendant will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. section 922(g)(9); RCW 9.41.040.

YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITE OR ALLOW YOU TO VIOLATE THE ORDER'S PROHIBITIONS. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

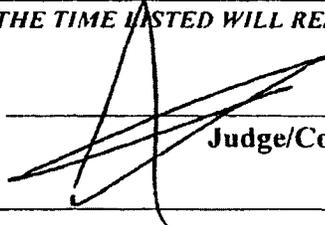
Pursuant to 18 U.S.C. section 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

6. **ORDER TO REPORT TO COURT** (check when applicable)

The Defendant shall report to the Lewis County District Court, Law and Justice Center, W. Main at Pacific, 3rd Floor, Chehalis, Washington at 1:00 p.m. on:

FAILURE TO APPEAR ON THE DATE AND AT THE TIME LISTED WILL RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST.

Dated: 4-6-09



Judge/Commissioner

Time: _____

By: _____

Telephonically Authorized Order and Signature - Expires at arraignment unless reissued by the Court.

I was present when this order was entered either telephonically or in person and hereby acknowledge receipt of a copy hereof, and also acknowledge that I will be criminally liable if I violate the terms of this court order.


Defendant: _____

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 39973-3-II
)	
MICHAEL FILIPPI,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 22ND DAY OF APRIL 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **LETTER TO THE COURT DATED 04/22/2010 AND ENCLOSED APPEDIX** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] LIAM GOLDEN
LEWIS COUNTY PROSECUTOR'S OFFICE
345 W. MAIN STREET
FLOOR 2
CHEHALIS, WA 98532

- [X] MICHAEL FILIPPI
LEWIS COUNTY JAIL
345 W. MAIN STREET
CHEHALIS, WA 98532

SIGNED IN SEATTLE WASHINGTON, THIS 22ND DAY OF APRIL 2010.

x *Patrick Mayovsky*

FILED
COURT OF APPEALS
10 APR 23 AM 11:46
STATE OF WASHINGTON
BY *Sm*
DEPUTY