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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY
DEPUTY

LEROY R. BRANDT JR.,

Appellant

Vs.

STATE OF WASHINGTON

Respondent

REPLY BRIEF OF APPELLANT

ON APPEAL FROM

SUPERIOR COURT OF THE STATE OF WASHINGTON

THE HONORABLE JUDGE VICKI L. HOGAN

CASE NO.: 08-1-02151-5

RETURN OF PROPERTY CrR 2.3(e)

LEROY R. BRANDT JR.

WASHINGTON STATE PENITENTIARY

1313 n. 13 Ave

Walla Walla, WA 98362

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1. ARGUMENT WHY REVIEW SHOULD BE GRANTED

There has been an abuse of process. In this case, the use of the court process to go beyond statutory authority to take Brandt's personal property happened. His home was invaded under warrant, and hordes of property was taken. Some of the property was not his and rightfully returned to the proper owners. The rest of the personal property was kept. When Brandt asked for it's return on the basis of his legal receipt given his wife when the warrant was served, and in addition an affidavit from his wife Laura Brandt made part of the court record, the court ordered the release of the property upon proof of title. This was an abuse of discretion that shifted the burden from the State to prove legal claim that it does not belong to Brandt. The court did not hold the required evidentiary hearing and require the State to dispute ownership. The court's finding of fact, "one of the items is a Craftsman reciprocal saw with a serial number. And so while the Court agrees that you don't get title to those things in the same way that you get for a car or mobile home or something like that, without some acquisition of ownership, the Court is not in a position to do anything other than confirm what is listed on the property release. I think this is consistent with what I ordered when we talked about this initially at the Judgment and Sentence and that he would be entitled to those items that were his in which he could prove ownership. RP June 18th, 2010, Pg. 5. This is beyond the Courts authority when the law says that the receipt issued when the property is seized denotes prior ownership.

The State breaches Brandt's plea agreement by asking this Court to consider this action moot. The State also breaches Brandt's plea agreement by including exceptions which simply do not exist. Contract law and fundamental fairness governs the plea process. The plea must, of course, be voluntary and knowing and if it was induced by promises, the essence of these promises must in some way be made known. Santobello v. New York, 404 U.S. 257, 30 L.Ed. 2d 427, 92 S.Ct. 495 (1971). Since the plea is a contract it must be taken at face value. That has not happened here. The State is reading in to it way too much, and the exact opposite, of what is there. Brandt's, or any layman's understanding of the plea agreement denotation, regarding the forfeiture, is that the title items would be surrendered. This meant the vehicles and trailers. The very requirement of producing a "title" to verify ownership can only apply to vehicles and titled chattel. The argument that the State made that based on this, that Brandt agreed to forfeit all his property is ludicrous. This ruling by the Trial Court was an abuse of discretion and a manifest injustice of a constitutional magnitude. When the County can take your property without recourse to have it returned, what is next, chopping off of an offending limb? The Fifth Amendment to the United States Constitution says no on both accounts. Contracts which the Constitution protects are those that relate to property rights, not governmental. Boyd v. Alabama, 94 U.S. 645, 4 Otto 645, 24 L. Ed. 302 (1877). As a general matter, we interpret plea agreements in accordance with ordinary principles of contract law. United States v. Ingram, 979 F.2d 1179, 1184 (7th Cir. 1992). Plea agreements are unique contracts that implicate the right to

fundamental fairness under the Due Process Clause. Thus, "we review the language of the plea agreement objectively and hold the government to the literal terms of the plea agreement."

United States v. Monroe, 580 F.3d 552 (7th Cir. 2009)(quoting United States v. Williams, 102 F.3d 923, 927 (7th Cir. 1996)).

Literally then, Brandt did agree to forfeit property he could not show "title" for, not property that does not possess a title.

Take what is illegal, and then, return the rest, is what any competent jurist would construe this contract to mean "title"

wise. It is what Brandt interpreted it to mean when he asked for his personal property back that not even the State raised a claim propoing that it belonged to anyone but Brandt. Under State law

CrR 2.3(d), the officer who executes the search warrant is by law required to, "give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt." Leroy

Brandt was the property owner. The items seized from Brandt's home and property were inventoried and a receipt denoting

ownership was given to Brandt's wife Laura Brandt. This is proper proceedure as Brandt is the legal owner until the State can prove otherwise. This is why America has Constitutional protections.

Under Washington State law, a court may refuse to return property no longer needed for evidence only if (1) the Defendant is not

the rightful owner; (2) the property is contraband; or (3) the property is subject to forfeiture pursuant to statute. Barlindal

v. City of Bonney Lake, 84 Wn.App. 135, 139, 925 P.2d 1289 (1996)

(quoting State v. Alaway, 64 Wn.App. 796, 798, 828 P.2d 591,

review denied, 119 Wn.2d 1016, 833 P.2d 1390 (1992)). The key

word here is, "only". Brandt's trial Court's ruling was beyond it's jurisdiction and authority, as no statute or Washington law provides for the circumvention of due process style forfeiture of a person's legally possessed personal property from ones home. What Brandt expected returned is everything not laid claim to as anyone else's proven property. All of vehicles and trailers he had no expectation of getting back. All of his personal property that he was given receipt for, he expects back. The seizure of property form someone is prima facia evidence of that person's entitlement. State v. Marks, 114 Wn.2d 724, 734, 790 P.2d 138 (1990)(quoting United States v. Wright, 197 U.S.App. D.C. 411, 610 F.2d 930, 939 (D.C. Cir. 1979)). The burden is on the City to prove a greater right of possession than the plaintiffs. State v. Card, 48 Wn.App 781, 790-91, 741 P.2d 65 (1987). The title to that property resides in the person from whom the property was seized. State v. Hendrickson, 129 Wn.2d 61, 75, 917 P.2d 563 (1996). For over a hundred years this has been the law in the United States. Possession is prima facia evidence of some kind of rightful ownership. Northern Pacific Co. v. Lewis, 162 U.S. 366, 372, 16 S.Ct. 831, 883, 40 L.Ed. 1002 (1896). The trial Court did abuse it's discretion in ignoring the Affidavit of Laura Brandt that was substantial evidence of ownership of the seized property still held that had not been returned to claimants as the rest that was legally proven, had. Leroy Brandt's wife said under oath that she had purchased many of the items. This marriage related property is substantial proof of ownership. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person

of the truth of the declared premise. Bering v. SHARE, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), cert. dismissed, 479 U.S. 1050 (1987). Forfeiture does not apply to Brandt's personal property that was taken from his home. Brandt was given a receipt for this property held by the State. Brandt never agreed to relinquish his personal property. It is beyond the scope of a plea agreement to make a corruption of blood, ask for an offending limb to be cut off, or in this case, ask for personal property not used in a crime or in the commission of a crime. Buying justice is what exactly that would entail if felons were enabled through the plea process to get off "Scott Free" by paying for less time. This is exactly why the State's argument cannot stand. To let this slide through the cracks would send a message to all rich criminals that Washington State is the place to come to commit crime as you can buy your way out of it through the plea process. Forfeitures are not favored in law and are never enforced in equity unless the right thereto is so clear as to permit no denial. Pardee v. Jolly, 163 Wn.2d 588 (2008). In absence of any cognizable claim of ownership or right to possession adverse to that of appellant, the district court should have granted appellant's motion and returned to him the money taken from him by government seizure. United States v. Palmer, 565 F.2d 1063, 1065 (9th Cir. 1977). The State's position is flawed with several fundamental defects which inherently result in a complete miscarriage of justice. The ends of justice demand that this Petition be granted to thwart evil.

2. CONCLUSION AND RELIEF REQUESTED

Brandt asks this Court to accept review and order his property be duly released to him. Brandt also asks that an evidentiary hearing be granted in the interests of justice if the release is not outright ordered. Brandt also asks for costs for any missing personal property held by the State not able to be returned to him at fair market value to replace. Brandt also asks for costs accrued in this litigation.

Respectfully submitted

Dated this 12 day of March, 2012.


Leroy Brandt, Pro se.

I, Nancy Brandt, hand delivered 2 copies of REPLY BRIEF OF APPELLANT case NO.: 40921-6-II for Leroy R. Brandt to the Court of Appeals and one copy of said Brief to the Prosecutor's office on March 12, 2012.

Nancy Brandt *Nancy Brandt* Date 3/21/2012

LEROY R. BRANDT JR.,

Appellant

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Respondent

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WASHINGTON STATE PENITENTIARY

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I, Nancy Brandt, hand delivered 2 copies of REPLY BRIEF OF APPELLANT case NO.: 40921-6-11 for Leroy R. Brandt to the Court of Appeals and one copy of said Brief to the Prosecutor's office on March 12, 2012.

Nancy Brandt



Date

2012/3/21

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