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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
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COURT OF APPEALS

DIVISION TWO

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
 RESPONDENT)
)
 V.)
)
 MESHAWN ALEXANDER)
)
 APPELLANT)

NO. 49924-0-II

STATEMENT OF ADDITIONAL

GROUND FOR REVIEW

ADDITIONAL GROUND ARGUMENT I

IN THE PRESENT CASE, ALL EVIDENCE THAT WAS RELIED UPON IN THE TRIAL OF MR. ALEXANDER SHOULD BE SUPPRESSED, AS "FRUIT OF THE POISONOUS TREE" DOCTRINE. THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE II SECTION 7 OF THE WASH. STATE CONSTITUTION PROHIBIT UNREASONABLE SEARCHES AND SEIZURES.

AS A GENERAL RULE, A WARRANTLESS SEIZURE IS PER SE UNREASONABLE AND THE STATE BEARS THE BURDEN OF DEMONSTRATING THE APPLICABILITY OF A RECOGNIZED EXCEPTION. STATE V. DAY, 161 WN.2D 889, 893-94, 168 P.2D 11265(11007).

A TERRY STOP IS JUSTIFIED IF THE OFFICER CAN POINT TO SPECIFIC AND ARTICULABLE FACTS WHICH, TOGETHER WITH RATIONAL INFERENCES FROM THOSE FACTS, REASONABLY WARRANT THE INTRUSION. TERRY V. OHIO 11911 U.S. AT 211. SEE STATE V. ACREY.

EVIDENCE IS INADMISSIBLE AS "FRUIT OF THE POISONOUS TREE" WHERE IT HAS BEEN OBTAINED BY EXPLOITATION OF AN OFFICERS ILLEGAL CONDUCT. SEE WONG SUN U.S. 3711.

"IF THE INITIAL STOP WAS UNLAWFUL, THE SUBSEQUENT SEARCH AND FRUITS OF THAT SEARCH ARE INADMISSIBLE." STATE V. KENNEDY, 107 WN.2D 1, 4, 7116 P.2D 445(11986) (CITING WONG SUN, 11711 U.S. AT 471).

STATE V. WALKER 66 WN.APP. 622, IN REVIEWING A TRIAL COURTS DECISION FOLLOWING A SUPPRESSION HEARING, THE FINDINGS OF THE TRIAL COURT ARE OF GREAT SIGNIFICANCE. SEE E.G. STATE V. MENNEGAR, 114 WN.2D 304 787 P.2D 1347(11990). HOWEVER [66 WN.

P/M: 10/25/17

APP. 626] THE CONSTITUTIONAL RIGHTS AT ISSUE REQUIRE AN APPELLATE COURT TO MAKE INDEPENDENT EVALUATION OF THE RECORD. MENNEGAR, 1114 WN.2D AT 310.

IN THE PRESENT CASE, THE EVIDENCE THAT THE STATE USED AGAINST MR. ALEXANDER IS CLEARLY "FRUIT OF THE POISONOUS TREE". TO BUILD ON THE ILLEGALITY OF THE "FRUITS", IS THE FACT THAT MR. ALEXANDER WAS ILLEGALLY STOPPED, DETAINED¹¹ AND ARRESTED¹¹. "[W]HENEVER A POLICE OFFICER ACCOSTS AN INDIVIDUAL AND RESTRAINS HIS FREEDOM TO WALK AWAY¹¹ HE HAS "SEIZED" THAT PERSON", ID AT 16 AND THE FOURTH AMENDMENT REQUIRES THAT THE SEIZURE BE "REASONABLE". U.S. V. BRIGNONI-PONCE 422 U.S. 87¹¹, 878¹¹ 45 L.ED 2D 607, 95 S.CT. 2574(1975). SEE BROWN V. TEXAS¹¹ 443, 47. THIS RULE APPLIES TO THE STOPPING OF AN AUTOMOBILE AND THE DETENTION OF ITS OCCUPANTS.

IN THE STATE

CASE OF LARSON¹¹ 93 WN.2D 638 (1980). "BY THE OFFICERS OWN TESTIMONY, THE DECISION TO STOP THE CAR WAS MADE WHEN IT WAS FIRST OBSERVED AND BEFORE THE OFFICERS APPROACHED AND FLASHED THE BLUE LIGHT. THUS THE FACT THAT THEREAFTER THE DRIVER STARTED THE CAR AND BEGAN TO DRIVE AWAY HAD NO PART IN THE DECISION TO STOP IT. IN ANY EVENT, THE DRIVER DID NOT ATTEMPT TO ELUDE THE POLICE, BUT STOPPED IMMEDIATELY WHEN THE LIGHT WAS FLASHED.

WHEN CONSIDERED IN TOTALITY, THEREFORE THE CIRCUMSTANCES KNOWN TO OFFICERS AT THE TIME THEY DECIDED TO STOP THE CAR DID NOT GIVE RISE TO A REASONABLE AND ARTICULABLE SUSPICION THAT THE OCCUPANTS WERE ENGAGED OR HAD ENGAGED IN CRIMINAL CONDUCT. BROWN V. TEXAS¹¹ SUPRA¹¹ BUT AT BEST AMOUNTED TO NOTHING MORE SUBSTANTIAL THAN AN INARTICULATE HUNCH. TERRY V. OHIO".

THIS DOES NOT MEET THE CONSTITUTIONAL CRITERIA OF REASONABLENESS FOR STOPPING A VEHICLE AND QUESTIONING ITS OCCUPANTS.

IN BROWN, THE OFFICERS DID NOT CLAIM TO SUSPECT BROWN OF ANY SPECIFIC MISCONDUCT ACCORDINGLY, WE BELIEVE THAT THE POLICE OFFICER WHO DETAINED THE PETITIONER FOR

THE PURPOSE OF REQUIRING HER TO IDENTIFY HERSELF DID SO IN VIOLATION OF THE UNITED STATES CONSTITUTION AND CONSTITUTION ARTICLE 1 §7 BECAUSE NONE OF THE CIRCUMSTANCES PRECEDING THE OFFICERS DETENTION OF THE PETITIONER JUSTIFIED A REASONABLE SUSPICION THAT SHE WAS INVOLVED IN CRIMINAL CONDUCT. BROWN V. TEXAS, SUPRA. INDEED IT APPEARS THAT SHE WAS DETAINED BECAUSE OF HER PRESENCE IN A PARTICULAR LOCATION EVEN THOUGH SHE HAD A LAWFUL RIGHT TO BE THERE, RATHER THAN BECAUSE OF ANY SUSPICIOUS CONDUCT.

WE AGREE WITH THE TRIAL JUDGE THAT [611 P.¶D 776] POLICE OFFICERS SHOULD BE ENCOURAGED TO INVESTIGATE SUSPICIOUS SITUATIONS, BUT THEY MUST NOT DO SO WITHOUT PROPER LEGAL FOUNDATION. IN THE CASE OF STATE V. T.H. ¶36 WN.APP. ¶05¶ 2007 WASH. APP. LEXIS 609(2007) ON APPEAL¶ T.H.¶S PRIMARY CONTENTION IS THAT HE WAS UNLAWFULLY SEIZED WHEN THE OFFICERS STOPPED THEIR PATROL CARS AND ACTIVATED THEIR FLASHERS AND SPOTLIGHT. BUT WE DO NOT ADDRESS THIS ISSUE BECAUSE WE CONCLUDE THAT, IN ANY EVENT, THE OFFICERS DID NOT HAVE A REASONABLE SUSPICION OF CRIMINAL ACTIVITY WHEN THEY ORDERED T.H. OUT OF THE CAR. WE ADDRESS THIS ISSUE IN THE INTEREST OF JUSTICE, EVEN THOUGH IT WAS NOT CLEARLY RAISED IN T.H.'S BRIEF. [I]N DENY THE MOTION TO DISMISS, THE JUVENILE COURT RELIED ON THE SIMILARITY OF THE RED CAR TO THE CAR USED IN THE SHOOTING¶ THE PROXIMITY OF THE STOP TO THE LOCATION OF THE HOMICIDE, AND THE DRIVER¶S ACTIONS IN STOPPING THE CAR IN A DARK AREA OF THE VACANT LOT AND PUTTING HIS HANDS OUT OF THE WINDOW. BUT OFFICER RENNER ACKNOWLEDGED THAT MODIFIED JAPANESE CARS WERE "[U]BIQUITOUS". ANY SIGNIFICANCE TO BE ACCORDED THE CAR THEREFORE DIMINISHED SUBSTANTIALLY WHEN THE OFFICERS APPROACHED AND DETERMINED THAT THE OCCUPANTS WERE ASIAN, NOT HISPANIC. THE LOCATION OF THE STOP WAS AT LEAST "A COUPLE OF MILES" FROM THE SITE OF THE SHOOTING, A CONSIDERABLE DISTANCE. THE FACT THAT THE DRIVER VOLUNTARILY STOPPED, APPEARED NERVOUS, AND COMPLIED WITH FELONY STOP PROCEDURES WAS NOT PARTICULARLY

SURPRISING AFTER TWO PATROL CARS FOLLOWED HIM AND THEN ILLUMINATED HIS CAR WITH A STOPLIGHT. STATE V. BARWICK 6 BUN. APP. 706. 710, 83 P. 421 (1990) (MOST PERSONS STOPPED BY POLICE OFFICERS DISPLAY SOME SIGNS OF NERVOUSNESS). EVEN WHEN VIEWED TOGETHER, THE FOREGOING CIRCUMSTANCES DO NOT SUGGEST A SUBSTANTIAL POSSIBILITY OF CRIMINAL ACTIVITY.

BECAUSE T.H. WAS UNLAWFULLY SEIZED WHEN POLICE ORDERED HIM OUT OF THE CAR, THE EVIDENCE RECOVERED DURING THE SUBSEQUENT PAT-DOWN AND SEARCH INCIDENT TO ARREST-- THE SOLE EVIDENCE SUPPORTING T.H.'S CONVICTION-- MUST BE SUPPRESSED. T.H.'S CONVICTION IS REVERSED AND THE MATTER REMANDED TO THE JUVENILE COURT WITH INSTRUCTIONS TO DISMISS THE CHARGES.

FROM THE CASE LAW PRESENTED HERE, ALONG WITH THE APPELLATE BRIEF, MR. ALEXANDER BELIEVES THAT HE HAS PRESENTED A VALUABLE CASE FOR THIS COURT TO DETERMINE THE NEED TO SIMILARLY REMAND HIS CASE TO SUPERIOR COURT, WITH INSTRUCTIONS TO DISMISS THE CHARGES AGAINST HIM.

THE EVIDENCE IS COMPELLING, WITH STATE AND FEDERAL CASES TO SUPPORT SUCH AN INSTRUCTION.

THE FACT THAT MR. ALEXANDER WAS STOPPED IN THE DURANGO VEHICLE, WHICH HAD NO CONNECTION AT ALL TO THE REPORT OF THE SHOOTING, WITH THE EXCEPTION OF THREE "BLACK MALES", WAS NOT CAUSE TO STOP OR DETAIN THOSE INDIVIDUALS. THE FACT THAT HE WAS NOT ONLY STOPPED, BUT "SEIZED" AND "ARRESTED" WITHOUT CAUSE WAS AN ACT THAT INVADDED UPON HIS RIGHTS AS A U.S. CITIZEN AS WELL AS AN WASHINGTON STATE CITIZEN. FINALLY ALL OF THE EVIDENCE THAT WAS SEIZED, WAS DONE SO "UNLAWFULLY". WHEN YOU PUT ALL OF THIS TOGETHER IT IN FACT SHOWS THAT IN THIS INSTANCE THERE WERE NUMEROUS INVASIONS UPON MR. ALEXANDER'S RIGHTS. THAT BEING THE ILLEGAL SEIZURE AND THE SEARCH OF HIS PERSON AND THE VEHICLE.

WHERE WE RELY HEAVILY UPON THE CASE OF "WONG SUN" WHERE THE EVIDENCE SEIZED AS "FRUIT OF THE POISONOUS TREE" MUST BE THROWN OUT.

MR. ALEXANDER BEGS OF THIS COURT TO ACCEPT THIS STATEMENT OF ADDITIONAL GROUNDS
IN THE MOST LENIENT WAY POSSIBLE AS HE IS FILING THIS "PRO SE".

RESPECTFULLY SUBMITTED THIS 23rd DAY OF OCTOBERth 2017.

Alexander