

FILED
Court of Appeals
Division II
State of Washington
12/26/2017 3:27 PM

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION NO. II

*In re the Petition to Convene a Grand
Jury,*

Barnes Michael Ware,

Petitioner

and

*In re the Application for a Citizen
Complaint,*

Erika Johnson,

Petitioner.

NO. 50285-2-II

STATEMENT OF
ADDITIONAL
AUTHORITIES

COMES NOW the respondent, State of Washington, by and through its attorney, Pamela B. Loginsky, Special Deputy Prosecuting Attorney for Lewis County, and respectfully requests that the Court consider the following additional authority pursuant to RAP 10.8:

With respect to RAP 3.1, aggrieved party argument:

RAP 2.5(a) (“A party or the court may raise at any time the question of appellate court jurisdiction.”)

In re Ault, 15 Wash. 417, 46 P. 644 (1896) (an appellate court lacks jurisdiction to hear an appeal filed by a non-aggrieved person)

With respect to petitioners' tax payer status argument:

RAP 10.3(c) (“A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed.”)

In re Rapid Settlements, Ltd., 189 Wn. App. 584, 359 P.3d 823 (2015) (rule that a contention presented for the first time in a reply brief will not receive consideration on appeal applies to challenges to personal jurisdiction)

State v. Manthie, 39 Wash. App. 815, 826 n.1, 696 P.2d 33 (1985) (“It is improper to raise issues, even of constitutional magnitude, for the first time by reply brief, as there is no opportunity for an opposing.”)

Friends of N. Spokane County Parks v. Spokane County, 184 Wn., App. 105 (2014) (to allege taxpayer standing, a plaintiff's complaint must allege (1) a taxpayer's cause of action and facts supporting the plaintiff's taxpayer status, and (2) (3) the plaintiff asked the Attorney General's office to take the action before bringing his lawsuit)

Bercier v. Kiga, 127 Wn. App. 809, 823, 103 P.3d 232 (2004) (“Although taxpayers need not allege a direct, special, or pecuniary interest in the outcome of the suit to establish standing, they must first demonstrate that they asked the Attorney General to institute an action and the Attorney General refused.”)

RAP 9.1(a) (The "record on review" may consist of (1) a "report of proceedings", (2) "clerk's papers", (3) exhibits, and (4) a certified record of

administrative adjudicative proceedings.”).

RAP 9.1(e) (“Upon review of a superior court decision reviewing a decision of a court of limited jurisdiction pursuant to rule 2.3(d), the record shall consist of the record of proceedings and the transcript of electronic record as defined in RALJ 6.1 and 6.31. When requested by the appellate court, the superior court shall transmit the original record of proceedings and transcript of electronic record as was considered by the superior court on the appeal from the decision of the court of limited jurisdiction.”)

RAP 9.11 (“The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.”)

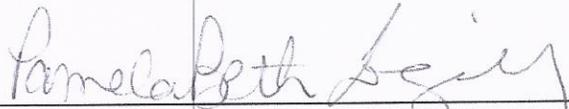
With respect to initiating a prosecution solely upon a determination of probable cause:

Braun v. Baldwin, 346 F.3d 761, 766 (7th Cir. 2003) (“Probable cause is not proof beyond a reasonable doubt, or even proof by a preponderance of evidence.”)

State v. Cotton, 673 A.2d 1317, 1321 (Me. 1996) (citations omitted)
 (“Probable cause does not require proof beyond a reasonable doubt. Rather, ‘the quantum of proof necessary to establish probable cause is less than the level of fair preponderance of the evidence.’”).

DATED December 26, 2017.

Respectfully Submitted,



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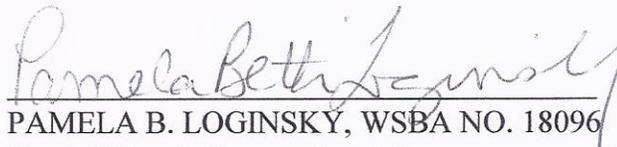
Proof of Service

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 26th day of December, 2017, pursuant to the agreement of the parties, I e-mailed a copy of the document to which this proof of service is attached to Adam Karp at adam@animal-lawyer.com
Rob Roy Smith at rsmith@kilpatricktownsend.com
Rachel B. Saimons at rasimons@kilpatricktownsend.com
David Rosengard at drosengard@aldf.org
Kathleen Wood at kmwood@aldf.org

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Signed this 26th day of December, 2017, at Port Orchard, Washington.


PAMELA B. LOGINSKY, WSBA NO. 18096
Special Deputy Prosecuting Attorney

WASHINGTON ASSOC OF PROSECUTING ATTY

December 26, 2017 - 3:27 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
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Appellate Court Case Title: In re the Petition to Convene a Grand Jury, Barnes Michael Ware, Petitioner
Superior Court Case Number: 16-1-00773-7

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