

FILED
Court of Appeals
Division II
State of Washington
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No. 50503-7

IN THE WASHINGTON STATE DIVISION II

State of Washington, Respondent

vs.

Charles W. Jones, Appellant

Appellant's Reply Brief

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ARGUMENT

***State v. Harris* is not relevant or analogous to this case.**

The State relies almost exclusively on *State v. Harris*, 44 Wn. App. 401, 722 P.2d 867 (1986) in its response. In *Harris*, the defendant filed a motion for disclosure of the confidential informant, or in the alternative, an in camera hearing regarding the identity of the informant. *Id.* at 404. This motion occurred in 1977, eight years before our supreme court issued *Casal* in 1985. 103 Wn.2d 812, 699 P.2d 1234 (1985). The *Harris* court cited *Casal* only once, as an afterthought. 44 Wn. App. at 405-06, 722 P.2d 867. Referencing the testimony of the defendant's witnesses, the court ruled that "[t]here is nothing in the testimony that is material to the issue of the credibility of Detective Sgt. Joe Sanford, the officer who signed the affidavit." *Id.* at 406. It went on to state:

This assignment of error must be rejected on the additional ground that approximately 9 years have gone by since the search warrant involved in this case was executed. Approximately 6 years of that delay is directly due to Harris' failure to appear for trial and absenting himself from the state following denial of his pretrial motions. After such a long delay, it is extremely doubtful that a remand could accomplish anything, even if it was otherwise appropriate. In the interest of justice, we would affirm the trial court's denial of Harris' motion on that ground alone.

Id.

This case is nothing like *Harris*. First, Mr. Jones did not abscond for six years. Second, Mr. Jones squarely requested a *Casal* hearing at the trial court, something that the defendant in *Harris* could not have done. Third, Mr. Jones has not requested that the State identify the informant or for an in camera hearing to identify the informant. Rather, Mr. Jones requested an in camera hearing to test the *veracity* of the informant. Fourth, the *Harris* court clearly focused on the credibility of the affiant. *Id.* (“There is nothing in the testimony that is material to the issue of the credibility of Detective Sgt. Joe Sanford, the officer who signed the affidavit.”). This focus is why *Harris* is inapplicable. A *Casal* hearing establishes the credibility of the *confidential informant*, not the affiant. Mr. Jones is not challenging the credibility of the affiant. Mr. Jones challenges the credibility of the confidential informant, which is why an in camera hearing is required per *Casal*.

The State attempts to distinguish *Casal* from this case by pointing to the type of evidence the defendant in *Casal* produced. But the *Casal* court has already disposed of this issue when it stated that corroboration is not necessary and that the defendant is required only to make a minimal showing of inconsistency. 103 Wn.2d at 820, 699 P.2d 1234. The State also refers to Mr. Jones’s declaration as a “general denial,” but Mr. Jones pointed to a specific fact as to why the informant’s version of events could

not have occurred. This satisfies the minimal showing of inconsistency to trigger a *Casal* hearing. The trial court erred when it denied Mr. Jones's request for a *Casal* hearing. This Court should reverse and remand.

CONCLUSION

Based on the foregoing, this Court should reverse and remand for a *Casal* hearing.

Respectfully submitted,



Vitaliy Kertchen #45183
Date: 1/5/18

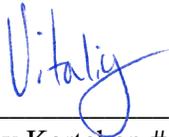
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I, Vitaliy Kertchen, being of sound age and mind, declare that on 1/5/18, I served this document on the Pierce County Prosecutor by uploading it using the Court's e-filing application and emailing a copy of the document using that process to PCpatcecf@co.pierce.wa.us.

I also served this document on the appellant, Charles W. Jones, by mailing a copy of it to Charles W. Jones, Inmate #973149, Monroe Correctional Complex (TRU), PO Box 888, Monroe, WA 98272.

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

Respectfully submitted,



Vitaliy Kertchen #45183

Date: 1/5/18

Place: Tacoma, WA

KERTCHEN LAW, PLLC

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