

FILED  
Court of Appeals  
Division II  
State of Washington  
11/27/2019 8:50 AM

No. 52969-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

vs.

**Baron Ashley,**

Appellant.

---

Clark County Superior Court Cause No. 18-1-00974-0

The Honorable Judge Robert A. Lewis

**Appellant's Reply Brief**

Jodi R. Backlund  
Manek R. Mistry  
Attorneys for Appellant

**BACKLUND & MISTRY**  
P.O. Box 6490  
Olympia, WA 98507  
(360) 339-4870  
backlundmistry@gmail.com

**TABLE OF CONTENTS**

**TABLE OF CONTENTS ..... i**

**TABLE OF AUTHORITIES ..... ii**

**ARGUMENT..... 1**

**Mr. Ashley has standing to assert a violation of his own  
constitutional rights. .... 1**

**CONCLUSION ..... 4**

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*Carpenter v. United States*, --- U.S. ---, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018)..... 2, 3

*United States v. Di Re*, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948) 2

*United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012)..... 2

**WASHINGTON STATE CASES**

*In re Pullman*, 167 Wn.2d 205, 218 P.3d 913 (2009)..... 1

*State v. Carter*, 127 Wn.2d 836, 904 P.2d 290 (1995) ..... 1, 3

*State v. Hinton*, 179 Wn.2d 862, 869, 319 P.3d 9 (2014)..... 1, 2, 4

*State v. Jones*, 146 Wn.2d 328, 45 P.3d 1062 (2002)..... 3

*State v. McNeair*, 88 Wn.App. 331, 944 P.2d 1099 (1997)..... 1

**CONSTITUTIONAL PROVISIONS**

Wash. Const. art. I, §7..... 1, 2

## ARGUMENT

### **MR. ASHLEY HAS STANDING TO ASSERT A VIOLATION OF HIS OWN CONSTITUTIONAL RIGHTS.<sup>1</sup>**

Mr. Ashley has standing to assert his constitutional rights under Wash. Const. art. I, §7 and the Fourteenth Amendment. The Court of Appeals should address the merits of his arguments.

Standing to assert a claim under Wash. Const. art. I, §7 differs from the analysis required under the Fourteenth Amendment. *See, e.g., State v. Carter*, 127 Wn.2d 836, 849, 904 P.2d 290 (1995). Respondent does not argue that Mr. Ashley lacked standing under the state constitution. Brief of Respondent, pp. 13-15. This failure may be treated as a concession. *See In re Pullman*, 167 Wn.2d 205, 212 n. 4, 218 P.3d 913 (2009); *State v. McNeair*, 88 Wn.App. 331, 340, 944 P.2d 1099 (1997).

Under the state constitution, privacy rights may be enforced by any person whose rights were infringed. *State v. Hinton*, 179 Wn.2d 862, 869 n. 2, 319 P.3d 9 (2014). Thus, the analysis “begins with the question of whether the State disturbed [the defendant’s] private affairs.” *Id.*

---

<sup>1</sup> Regarding the other arguments advanced by the State, Mr. Ashley rests on the argument set forth in his Opening Brief.

In *Hinton*, police seized a cell phone from a suspect. *Id.*, at 865. Using that cell phone, the officer read and responded to incoming text messages from the defendant. *Id.* The Supreme Court found that the defendant had standing under the state constitution to assert a violation of his privacy rights. *Id.*, at 869 n. 2. This was so even though the cell phone they seized belonged to another person.

Here, as in *Hinton*, the standing issue must be resolved by examining the merits of Mr. Ashley’s constitutional claim. If the police disturbed his private affairs under Wash. Const. art. I, §7, then he has standing to raise the violation. *Id.*

In addition, Mr. Ashley has standing to assert a violation of his Fourteenth Amendment rights. Mr. Ashley has a reasonable expectation that he will not be subject to “permeating police surveillance,”<sup>2</sup> including surveillance relating to information “disclosed to the public at large.” *Carpenter v. United States*, --- U.S. ---, \_\_\_, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018) (discussing *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012)). Accordingly, he has standing under the federal constitution.

---

<sup>2</sup> *United States v. Di Re*, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948).

Respondent also suggests that Mr. Ashley lacked standing because he was a casual visitor to his wife's apartment. Brief of Respondent, p. 14. But the state alleged that he repeatedly stayed at the apartment and that he kept his personal effects there. RP 270-308, 332-338; CP 87. He was arrested at the apartment. CP 87. The facts alleged by the State establish Mr. Ashley's standing to assert a constitutional violation.

Respondent implies that Mr. Ashley lacked standing because he was barred from the apartment by court order. Brief of Respondent, p. 14. But the legality of a privacy interest is irrelevant to the issue of standing, as can be seen in cases involving illegal possession of controlled substances or unlawful possession of a firearm. *See, e.g., Carter*, 127 Wn.2d at 904; *State v. Jones*, 146 Wn.2d 328, 45 P.3d 1062 (2002).

Respondent goes on to state that “[n]o one has a legitimate expectation of privacy in the parking lot.” Brief of Respondent, p. 14. This argument addresses the merits of Mr. Ashley's claim, rather than his standing to bring that claim.

Furthermore, a person may have a protected privacy interest in avoiding intrusive police surveillance even where the person's “movements [are] disclosed to the public at large.” *Carpenter*, --- U.S. at \_\_\_\_\_. If Mr. Ashley has such an interest, he necessarily has standing to assert that interest.

Police disturbed Mr. Ashley's private affairs and infringed his rights under the Fourteenth Amendment. Mr. Ashley has standing to assert these violations. The Court of Appeals should examine the merits of his claim. *See Hinton*, 179 Wn.2d at 869 n. 2.

### **CONCLUSION**

Mr. Ashley has standing to claim that police disturbed his private affairs and violated his right to be free from unreasonable searches and seizures. For the reasons set forth in Appellant's Opening Brief, the Court of Appeals must reverse Mr. Ashley's conviction and remand for suppression of the evidence.

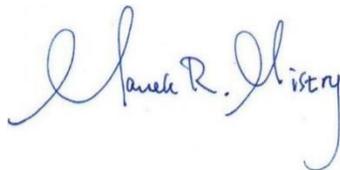
Respectfully submitted on November 27, 2019,

### **BACKLUND AND MISTRY**



---

Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant



---

Manek R. Mistry, WSBA No. 22922  
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

Baron Ashley, DOC# 838760  
Washington State Penitentiary  
1313 North 13<sup>th</sup> Ave.  
Walla Walla, WA 99362

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney  
rachael.rogers@clark.wa.gov  
CntyPA.GeneralDelivery@clark.wa.gov

I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on November 27, 2019.



---

Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

# BACKLUND & MISTRY

November 27, 2019 - 8:50 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52969-6  
**Appellate Court Case Title:** State of Washington, Respondent v Baron Del Ashley, Jr., Appellant  
**Superior Court Case Number:** 18-1-00974-0

### The following documents have been uploaded:

- 529696\_Briefs\_20191127085006D2680145\_8994.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was 529696 State v Baron Ashley Reply Brief.pdf*

### A copy of the uploaded files will be sent to:

- CntyPA.GeneralDelivery@clark.wa.gov
- rachael.rogers@clark.wa.gov

### Comments:

---

Sender Name: Jodi Backlund - Email: backlundmistry@gmail.com

Address:

PO BOX 6490

OLYMPIA, WA, 98507-6490

Phone: 360-339-4870

**Note: The Filing Id is 20191127085006D2680145**