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DIVISION II

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WASHINGTON STATE COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON

25

CITY OF LONGVIEW POLICE DEPARTMENT

RESPONDENT

-VS-

SIDNEY A. POTTS

APPELLANT

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY
COURT OF THE HONERABLE MICHEAL EVANS

AMENDED INITIAL APPEAL BRIEF

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Exhibit A - Motions for Discovery, A(1), Notice of Service,
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- Exhibit B - Judge Evans denial of Motion for Hearing on the Merit.
- Exhibit C - Transcript of December 19, 2013 Forfeiture Hearing.
- Exhibit D - January 16, 2020 Court Order.
- Exhibit E - December 19, 2013 "written notice" of Ownership or Right to Possess.
- Exhibit F - Withdrawal of Thomas Potts, and Appointment of Sidney Potts as President of the Corporation.
- Exhibit G - Special Inquiry Subpoena Duces Tecum, used to seize Potts's Red Canoe Records and Account on August 9, 2012.
- Exhibit H - Notice for April 24, 2013 Forfeiture Hearing.
- Exhibit J - Partial Transcript of Hearing for Return of Red Canoe Records and Account, in the Court of the Honorable Judge Stephen Warning, May 14, 2013.

STATEMENT OF THE CASE

On April 16, 2020, Superior Court issued an Order Dismissing Appellants Motion to Vacate for Lack of Statutory Authority, and Motion for Decision on the Merit, citing Doctrine of Waiver.

The issues dismissed have been under review since the original forfeiture hearing on December 19, 2013, and may not be considered waived.

On March 5, 2013, in Criminal Case No. 12-2-00876-8, Appellant moved for Return of the unlawfully seized account and records. On May 14, 2013 the Honorable Judge Stephen Warning Granted Appellants request for return and suppression of the bank records, but denied return of the account due to

the separate but parallel Forfeiture Proceeding. (See RP pgs. 482 thru 495, cause No. 45724-5-II).

On December 19, 2013, without the required seven (7) day prior Notice to Potts, the Agency held an unauthorized Forfeiture Hearing.

At the December 19, 2013 Forfeiture Hearing, "written notice" was served on the Agency, by Potts Family Motors Inc., requesting return of all lawfully owned or possessed property that had been seized from its place of business, 411 Oregon Way, on August 10, 2012; (See Transcript of Hearing pgs 72-78, Attached Exhibit C). (See Written Notice, Attached Exhibit E).

On January 19, 2014 the Agency issued the Void Administrative Order of Forfeiture, without holding the hearing within 90 days as required by statute, and the Supreme Court Ruling by the Tellevik Courts: Tellevik v 31641 W. Rutherford St., 120 Wn. 2d 68 at 87, 838 P.2d 111 (Tellevik I, 1992); and Tellevik v 31641 W Rutherford St., 125 Wn.2d 364, 844 P.2d 1319 (Tellevik II, 1994).

January 16, 2020 Superior Court discovered that the Clerk had mistakenly placed Potts's original Motion for Discovery, (Bank Search Warrants, Attached Exhibit A-2), in the Courts working copy file, and had not filed it in the Court Record. Judge Evans then Ordered the Clerk to properly file the Motion for Discovery, however, the Court made his Ruling, without addressing the Discovery Motion.

On January 19, 2020 , Counsel for the City of Longview

Police Department admitted in open court that the Agency does not have the required proof of service or "Notice of Hearing" seven (7) days prior to the December 19, 2013 Forfeiture Hearing; (See RP pg. 8, line 19 through pg. 19, line 16).

On January 19, 2020, Appellant made an Oral Motion, in Open Court, to Dismiss the Administrative Order of Forfeiture in its entirety, where lack of notice foreclosed the Agency's authority to acquire jurisdiction to hold the Forfeiture Hearing; (See RP pg. 19, lines 13-16); (RP pg. 41, line 4-13); (RP pg. 81, line 12 thru 21).

Mr. POTTS: And not only that, at this point in time I move to Vacate the Administrative Order of Forfeiture because the City lacked Personam Jurisdiction over the property of Potts Family Motors Incorporated or Sidney A. Potts, because they failed to give statutory required notice, or did not even have it. They attempt to sidetrack the issue by giving the Court a copy of a prior notice, which is not applicable.
(RP pg. 81, lines 12 thru 21).

ISSUES PRESENTED AND ARGUMENT

- I. Superior Court committed reversible error in denying the Motion to Vacate for Lack of Statutory Authority or Jurisdiction, under its Doctrine of Waiver theory.

Superior Court apparently misconstrued Appellants Motion to Vacate for lack of Statutory Authority or Jurisdiction, as an allegation of insufficiency of service. Appellants Motion to Vacate was for Lack of Statutory Authority or Jurisdiction hold the hearing or issue the Administrative Order of Forfeiture. (See Amended Motion to Vacate, CP #154). And even

if Potts has raised insufficiency of service, Superior Courts Doctrine of Waiver still not apply here. " A void judgement is always subject to collateral attack." Bresolin v Morris, 86 Wn.2d 241, 245, 543 P.2d 325 (1990); " A judgement entered without jurisdiction is void. This is true without regard to laches. Just as the one year statutory limitation does not apply, so likewise it is not necessary to show a defense on the merit. The law requires no showing other than that the defendant was in fact not served with process. This results from the facts that the power to vacate such judgement does not arise from the statutes or rule, it is an inherent power of the Court." Columbia Valley Credit Exchange Inc. v Bryon Lampson, 12 Wn.App. 952, 533 P.2d 152 (1975); " Notice must inform the party to whom it is directed that his person or property are in jeopardy." Ware v Phillips, 77 Wn.2d 879, 882, 468 P.2d 444 (1970); " Where a process server did not effect valid service on defendant, the judgement was void for lack of jurisdiction". Bill Morris v Palouse River and Coulee City Railroad, 149 Wn.App. 366, 203 P.3d 1069 (2009); " It is a fundamental tenant of due process that until adequate notice is given, a court has no jurisdiction to proceed to judgement. A judgement entered without notice is void." Northern Commercial Co. v E.J. Herman Co. Inc., 22 Wn.App. 963, 593 P.2d 1332 (1979); " A judgement entered without jurisdiction is a nullity, and no court, whether appellate or original jurisdiction , will continue an action or proceeding

where it is made to appear that it is without jurisdiction."
Hamilton v Johnson, 137 Wash. 92 (1925); " The authority of
a tribunal is confined by the terms of its authorizing statute;
the tribunal has no power to assume jurisdiction greater than
that conveyed by statute." In re Personal Restraint of Leland,
115 Wn. App. 517 (Div.III 2003).

The City Attorney admitted in open court , (RP pg. 13, line 24 through pg. 15 line 15); that it did not have proof of service seven (7) days prior to the December 19, 2013 Hearing, as required by statute, and requested in Motion for Discovery, (CP #142, See Attached, Exhibit A-1).

After the City admitted failure to comply with the Statutory and Constitutional Service Requirements, Appellant made an Oral Motion to Vacate due to the City's lack of jurisdiction or Statutory Authority to issue the ill-fated Administrative Order of Forfeiture on January 19, 2014, (RP pg. 81, line 12 thru 21), and then subsequently filed the Amended Motion to Vacate; (CP #154).

Superior Court erred in denying what it referred to as an Insufficiency of Service Issue, where, remedy is the same for both issues, and failure to comply with the Statutory and Constitutional Service Requirements preempted the Agency's Statutory Authority to hold the Forfeiture Proceeding, or issue the void order, which is the issue raised herein by Appellant. Both issues apply to the Agency's lack of jurisdiction to hold the hearing or issue the order, and Superior Courts Doctrine of

Waiver may not be applied to either. " Jurisdiction must always be determined before any other inquiry." Aamer v Obama, 953 F.Supp. 213 (2002).

In Superior Courts Ruling, (Attached, Exhibit B, at pg.3), Superior Court held, " The Doctrine of Waiver is designed to prevent a defendant from ambushing a plaintiff during litigation either through delay in asserting a defense or misdirecting. Waiver of Defense of insufficient service may occur in two ways; (1) The assertion of the defense is inconsistent with defendants behavior; or (2) defendant has been dilatory in asserting the defense."

It is clear from the record that Appellant has consistently requested production of the Agency Record. Defendant has requested the Agency Record since filing of the Original Notice of Appeal. (CP #6, 6/12/2014, Motion Requesting Order for Preparation of the Record; CP #8, 6/19/2014, Order Denying Motion for Preparation of Record; CP #38, 8/10/2015, Request for Discovery; CP #68, 5/16/2016, Appellants Motion to Compel Production of Record; CP #72, 5/27/2016, City's Objection and Opposition to Appellants Motion for Agency Record; CP #74, Order Denying Motion for Agency Record, Judge Michael Evans; CP #115, 4/16/2018 Request for Production of Agency Record; CP #120, 5/10/2018, Order Granting Request for Agency Record; CP #142, 12/06/2019, Request for Order of Discovery.

Appellant did not receive a copy of the Agency Record

until after December 14, 2019, (See Proof of Service, Attached Exhibit C), and Appellant could not raise the issue until the Agency Record was entered into Superior Courts Record. " Before a Court can test the validity of Administrative Action against the rule that such action must not be arbitrary, capricious, or contrary to law, it must have the record of the evidence submitted to the agency for consideration and upon which it acted." Reiger v City of Seattle, 57 Wn.2d 651, 359 P.2d 151 (1961).

The Court Record clearly demonstrates that Appellant has, (1) been consistent in his effort to acquire a copy of the Agency Record, and was barred from entering the Motion to Vacate until the City finally entered the Record into evidence and finally conceded that it had not complied with Statutory and constitutionally required Service of Notice, and (2) Appellants relentless pursuit of the Agency Record, (2014-2019), demonstrates that he has not been dilatory in seeking evidence to support his lack of jurisdiction and Statutory Authorization Claim.

It has been the City which has consistently refused to enter the Agency Record into evidence, thus impeding Appellants ongoing efforts to perfect the defense of Lack of Jurisdiction and Statutory Authority, which should have required Superior Court to Dismiss the Administrative Order of Forfeiture, in its entirety.

A. Superior Court erred in holding that the Agency is not required to maintain the notice of service for at least seven years.

RCW 34.05.476(1) requires that an agency maintain an official record of each adjudicative proceeding; RCW 34.05.476(2)(a) requires that all notices shall be included in the record; RCW 34.05.476(3) mandates the Agency Record constitutes the exclusive basis for Agency Action in adjudicative actions under this chapter; and RCW 34.05.588 mandates, Judicial review of disputed issues of fact [shall] be conducted by the court without a jury and must be confined to the Agency Record for Judicial Review as defined by this chapter.

Accordingly, where the procedures to be followed in said hearing are contained in RCW 34.05 et seq., and legal authority and jurisdiction under which the hearing is to be held are contained in RCW 69.50.505, then, RCW 34.05.476(2)(a)'s. mandate that all notice shall be included in the record almost certainly invokes the mandate of RCW 69.50.505(8)(h).

RCW 69.50.505(8)(h) - Each seizing agency shall retain records of forfeited property for at least seven years.

And even if it were not required by statute, due process of the law would require the Agency maintain the record until all litigation was terminated by a final unappealable judgement.

B. Superior Court erred in denying Appellants Motion for Discovery for proper service of Notice.

In Appellants Motion requesting Order for Discovery, (CP #142, Attached Exhibit A), Appellant requested the court "issue an Order for the City of Longview Police Department, or its counsel, produce the original or a certified copy of the Agency's timely notice seven days prior to the forfeiture hearing, pursuant to RCW 34.05.434. (See Notice of Hearing, Exhibit H.)

Appellant informed the Court that without proper notice, the city could not presume to acquire statutory authority or jurisdiction to proceed with the December 19, 2013 Forfeiture hearing. Appellant further related the opinion of all courts to have addressed this issue, that, lacking proper authority or jurisdiction, any order or judgement would be null and void.

Washington Superior Court Civil Rule 26(b)(1) authorizes discovery of any matter, not privileged, which may be admissible in evidence or which appears reasonably calculated to lead to the discovery of admissible evidence. No showing of good cause is required. McGugart v. Brumback, 77 Wn.2d 441, 463 P.2d 140 (1969).

Superior Court should have granted the Motion for Discovery, and allowed Appellant to further inquire as to why the City had not complied with the statutory notice requirement. Instead, Superior Court immediately denied the Motion, and refused to allow further discourse on the matter (RP pg. 18, line 1 thru pg. 19, line 16).

C. Superior Court abused its discretion by failing to address Appellants Motion to Vacate for Lack of Jurisdiction or Statutory Authority.

Appellants Motion to Vacate is based on the Agency lack of statutory authority, or subject matter jurisdiction to hold a forfeiture hearing on December 19, 2013, or issue the Administrative Order of Forfeiture on January 19, 2014.

The Citys failure to serve Notice on Appellant, seven days prior to the hearing has deprived the Agency of statutory authority, or subject matter jurisdiction to hold the Forfeiture Hearing on December 19, 2013.

The only Notice Appellant received was for the Hearing scheduled for April 24, 2013 at 9:30 AM. (See Exhibit H, Attached), However, that date had expired long before the Agency Hearing held on December 19, 2013. And from this Notice in the Record, it is clear that the City was very aware of its statutory obligation to provide Notice seven days prior to the hearing, and maintain that Notice in the Record.

"The power to Order forfeiture is purely statutory. No common law of forfeiture exists in the United States, and the drug forfeiture statute provides the exclusive mechanism for forfeiting drug dealers property." Bruett v. 18328 11th Ave. N.E., 93 Wn.App. 290, 968 P.2d 913 (1993).

"The actual knowledge of an interested party of the pendency of litigation is not sufficient to invoke personam jurisdiction over that party, only compliance with statutory

notice and service requirements is sufficient." Veradale Valley Citizens Planning Commission v. Board of Commissioners, 22 Wn.App. 229, 588 P.2d 750.

The law of the State of Washington, RCW 34.05.434(1), Notice of Hearing is the threshold requirement for an Agency to acquire statutory authority or jurisdiction over the planned forfeiture proceeding. The City's admitted failure to notify Mr. Potts seven days prior to the December 19, 2013 Hearing, or failure to perfect Notice of Service, has denied the Agency statutory authority to proceed with that hearing.

Further, the City's unvoiced insinuation that there is circumstantial evidence which might support a finding that Mr. Potts recieved the required notice, means absolutely nothing to this proceeding.

"There is a difference between Constitutionally adequate service, and service required by statute. Beyond due process requirements, statutory service requirements must be complied with in order for the court to finally adjudicate a dispute between parties. A seizing agency must strictly comply with the service of process requirements RCW 69.50.505." Bruett v. Real Property Known as 18328 11th Ave N.E., 93 Wn.App. 290, 968 P.2d 917 (Div.I 1998).

"The power to order forfeiture of property associated with controlled substance violation is purely statutory, and will be denied absent strict compliance with proper forfeiture

procedure." City of Walla Walla v. \$401,333.44, 164 Wn.App. 236, 262 P.3d 1239 (Div.III 2011); Espinoza v. City of Everett, 87 Wn.App. 857, 943 P.2d 387 (1997).

Statutory authority to hold a forfeiture hearing or issue the Administrative Order of Forfeiture was foreclosed by the City's failure to comply with the requirement of statutory notice. "Any order issued outside the Agency's Statutory Authorization was void." State ex rel. Patchett v. Superior Court of Franklin County, 60 Wn.2d 272, 375 P.2d 747 (1962); Grady v. Dashiell, 24 Wn.2d 272, 163 P.2d 922 (1945); France v. Freeze, 4 Wn.2d 120, 102 P.2d 687 (1940).

It should follow then, that where the Administrative Order of Forfeiture issued without properly acquiring jurisdiction or statutory authority, it would be this court's duty to vacate the Void Judgment. "All courts have a non-discretionary duty to vacate void judgments." In re Dependency of A.G., 93 Wn.App. at 276 (1998); Alstate Insurance Co. v. Kani, 75 Wn.App. 317, 877 P.2d 724 (1994); "The law requires no showing other than the fact that the defendant was in fact not served with process, and the void judgment must be the void judgment must be vacated." Columbia Valley Credit Exchange Inc. v. Bryon Larson, 12 Wn.App. 952, 533 P.2d 152 (Div.III 1975).

"Notice must inform the party to whom it is directed that his person or property are in jeopardy." Ware v. Phillips, 77 Wn.2d 879, 882, 468 P.2d 444 (1970).

"Where a process server did not effect valid service on defendant, the judgement was void for lack of jurisdiction." Bill Morris v. Palouse River and Coulee City Railroad, 149 Wn.App. 366, 203 P.3d 1069 (Div.III 2009).

"It is a fundamental tenant of due process that until adequate notice is given, a court has no jurisdiction to proceed to judgement. A judgement entered without notice is void." Northern Commercial Co. v. E.J. Herman Co. Inc., 22 Wn.App. 963, 593 P.2d 1332 (Div.II 1979).

"A judgement entered without jurisdiction is a nullity, and no court, whether it be the court of original or Appellate jurisdiction, will continue an action or proceeding where it is made to appear that it is without jurisdiction." Hamilton v. Johnson, 137 Wash. 92 (1925).

"In general, subject matter jurisdiction is an elementary prerequisite to the exercise of judicial powder. Where a Court has no subject matter jurisdiction, the proceeding is void. The authority of a tribunal is confined by the terms of its authorizing statute; the tribunal has no power to assume jurisdiction greater than conveyed by statute." In re Personal restraint of Leland, 115 Wn.App. 517 (Div.III 2003).

This court should reverse Superior Courts denial of the Motion to Vacate, and Vacate the Void Administrative Order Forfeiture in its entirety, for lack of statutory authority or subject matter jurisdiction.

II. Superior Court Erred in Denying the Motion for Decision on the Merit, under its Doctrine of Waiver Theory.

Potts vigorously disputes Superior Courts theory that any of the issues raised in the Supplemental Notice of Appeal and Initial Brief are subject to its Doctrine of Waiver Theory. (See Initial Brief, CP #112).

Appellant raised these very issues in the first Judicial Notice of Fact, (CP #17, 7/10/2014), and first Supplemental Notice of Appeal, (CP #37, 8/10/2015), and in every adversarial litigation from that point, and the Motion for Decision on the Merit Relates all the way back to the Initial Judicial Notice of Fact. (CP #17, 7/10/2014; CP #37, 8/10/2015; CP #112, 4/02/2018).

Further, these issues have been on appeal the entire time, and this is the first time they have been addressed in any fashion by Superior Court.

Accordingly, Superior Court's holding that; "The City is prejudiced by Pott's failure to assert insufficiency of service defense because it has expended significant resources in defending the forfeiture action and was not given an opportunity to cure any defect at an earlier point," (CP #160, pg. 3, para. 3), is in direct conflict with the entirety of all discoverable law and Supreme Court precedent concerning insufficiency of service. Potts did not, and does not hold the power to enhance or impede the City's statutory and constitutional duty to serve notice. Nor is Potts responsible for the City's failure to do so.

From the Courts Order, and a full review of the record, Superior Court has denied Potts's Motion to Vacate and Motion for Hearing on the Merit, without a single cite of state statute, case law, constitutional law, or Supreme Court precedent in support of the unfounded Ruling of Waiver.

Superior Court has issued a ruling unsupported by fact or law, and the Court should Vacate that Entire Administrative Order of Forfeiture for Insufficiency of Service, and Lack of statutory authority or subject matter jurisdiction to issue the ill fated order.

III. Superior Courts failure to address the Motion for Discovery of Search Warrants for the Bank Accounts in this case has denied Potts's right to Due Process of the law, application of the Fourth Amendments Exclusionary Rule and personal protections.

At the hearing held on January 16, 2020, Superior Court discovered that Mr. Potts had previously mailed a Motion For Discovery of Search Warrants for the Bank Account forfeited here. (See Exhibit A). Defendant was informed by the court that the Clerk had not filed the Motion, but instead had forwarded the original motion to the trial courts working copy file. (CP #150, pg. 2, para. 3, Attached Exhibit D). The Trial Court gave the Motion for Discovery to the Clerk for filing and a later ruling.

The Court never ruled on the Motion for Discovery prior to denying the Motion to Vacate and Motion for Decision on the Merit. Superior Courts dismissal of the Motion for Decision on the Merit

was made in error, prior to a required ruling on the Motion for discovery. "Washington Superior Court Rule 26(b)(1) authorizes discovery of any matter, not privileged, which may be admissible in evidence or which may be admissible in evidence or which appears reasonably calculated to lead to discovery of admissible evidence." McGugart v. Brumback, 77 Wn.2d 441, 463 P.2d 140 (1969).

Appellant's Original Motion for Suppression of all evidence unlawfully seized at 2839 Louisiana Street, including bank records, on August 10, 2012, and continued forward until the Criminal Court of Appeals Rules that the warrants were improper, and all property unlawfully seized must be returned and suppressed.

Superior Court held that since the civil and criminal proceedings were parallel but separate, the Court of Appeals Ruling did not control in the civil forfeiture proceeding.

In the subsequent appeal of Superior Court Ruling, this Court ruled that in the case at bar, the Criminal Court of Appeals Ruling did in fact apply.

Potts supports his allegation that Superior Court erred in failing to address the Discovery issue, prior to Ruling, is based on this Courts finding that the Criminal Courts finding that the search at 2839 Louisiana Street was unlawful, and all unlawfully seized property must be returned would also mandate implementation of the Fourth Amendment Exclusionary Rule.

Potts kept full and complete records of all three Bank Accounts

seized unlawfully at 2839 Louisiana Street on August 10, 2012.

Appellant had complete and up to date copies of Fiber Federal Account #352385, Fiber Federal Account #416621, and Red Canoe Account #156181 at home, which pursuant to the Court of Appeals Ruling and the Fourth Amendments Exclusionary Rule may not be used to seize and forfeit those accounts.

Not only may they not be used to seize and forfeit those specific accounts, a search warrant seeking to validate the unlawful search and seizure of the records, would also be unlawful.

However, on the chance that a search warrant issued for the purpose of curing an unlawful search would be lawful, Appellant who is very aware of the Street Crimes Unit's propensity to cut corners and take unlawful shortcuts, believes that the Officers involved did not seek to execute any warrants at the Fiber Federal Credit Union, or the Red Canoe Credit Union on August 10, 2012. Feeling secure in the fact that he had just seized the full and complete bank record at 2839 Louisiana Street.

Appellant believes that the officers did not execute any Warrants at Fiber Federal Credit Union on August 10, 2012, and has made a valid request in Discovery of the proof required under CrR 2.3(d) - Execution and Return with Inventory.

CrR 2.3(d) - Execution and Return With Inventory.
The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of

the search warrant and receipt. The Return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The Court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the property was taken and to the applicant for the warrant.

Appellant is in possession of a purported search warrant, allegedly executed 15:40 hrs August 10, 2012, however the warrant only allows for the search of Fibre Federal Account #416621, and the attached inventory does not specify what evidence was seized, or from where it was seized. (See Warrant Attached, Exhibit I).

This warrant has the same defect as the warrant used to search 2839 Louisiana Street, 1275 Alabama Street, and 411 Oregon Way, the heading describes four bank accounts, but the authorization only authorizes search of Fiber Federal Bank Account #416621, and search of the other accounts, if in fact one were made, was improper.

Further, the return and inventory only specify as evidence seized, "Bank Records for Potts Family Motors Inc., and Sidney A. Potts." There is no mention of which accounts were seized, where they were seized from, and what time the seizure was made.

From this warrant Appellant can not find any assurance that any vaild search was made, or when it allegedly occured. There is no mention at all of a search occurring at Red Canoe Credit Union.

Appellant has requested Superior Court to comply with

this courts finding that the search at 2839 Louisiana Street was unlawful, and all unlawfully seized property must be returned. Mandated Return under CrR 2.3(e) would also require application of the Exclusionary Rule for all the unlawfully seized bank records.

Appellant is therefore entitled to discovery as to whether any valid warrants were executed in seizing the contested accounts, and Superior Courts denial of the Motion to suppress any unlawfully seized bank records and accounts, without first reviewing the request for discovery, was premature, and should be reversed and remanded to superior court for futher proceedings.

This is especially true where the officer has not complied with CrR 2.3(e), and authorization in the warrant does not mention the Red Canoe Credit Union at all.

IV. Superior Court failed to properly review Appellants claim of Lack of Probable Cause, or Legal authority to seize vehicles at 411 Oregon Way on August 10, 2012.

Superior Court attempts to re-interpret the Appellate Court Ruling to support its own out of context Opinion. In its ruling, superior court held, "The Appellate Court did not rule that the seizure of vehicles from 411 Oregon Way was unlawful or without probable cause or without judicial authority. On the contrary, the Appellate Court held that the search warrant authorized a search for the property connected with Potts Family Motors." (411 Oregon Way, Order CP #160, pg. 4, para. 2).

Potts agrees, the Court of Appeals did not rule that the seizure of vehicles from 411 Oregon Way was unlawful or without probable cause or without judicial authority. However, the Court of Appeals also did not rule that seizure of vehicles from 411 Oregon Way was lawful, supported by probable cause or were judicially authorized. What the Court did was to remand for further proceedings to determine the merit of the issues. A review which has not been forthcoming.

The Court ruled that, "Potts argues that... the department failed to follow RCW 69.50.505's notice requirements. Our record on Appeal contains neither the search warrant or any notice or lack thereof. Therefore we decline to address the issue." (See No. 48410-2-II, pg. 11, para. 11). The Court left the issue open for supplemental pleadings on ^{remand} demand.

In Pott's Motion for Decision on the Merit, (CP #128), Potts notified Superior Court that there was no probable cause or judicial authorization to support the unlawful seizure. Potts informed the Court that these issues were argued at pgs. 4 and 5 of Appellants Supplement Notice of Appeal and Initial Brief. (CP #112).

At #3 of Motion for Decision on the Merit, Potts argued the probable cause issue. Potts pointed out that the issue was argued at pag. 5 and 6 of the Supplemental Notice of Appeal and Initial Brief.

The Court should remand to Superior Court for a full and

complete review of the issues raised at pgs. 4, 5, and 6 of the Supplemental Notice of Appeal, as contemplated in the earlier Order of Remand.

V. Superior Court erred in failing to consider alleged violation of the Washington Supreme Courts Brite Line Rule established in State v. Tellevik II.

A. Superior Court erred in failing to address the hearing Officers lack of statutory authority under RCW 69.50.505 to issue the Administrative Order of Forfeiture. The issue was raised at #4 of the Motion for Decision on the Merit, and argued at pgs. 6 thru 12 of the Supplemental Notice of Appeal and Initial Brief.

The issue raised at #4 of the Motion for Decision On The Merit, (CP #128), and argued at pgs. 6 thru 12 of the Supplemental Notice of Appeal and Initial Brief, (CP #122) was whether the failure of the Agency to hold a hearing for Potts Family Motors, after written notice, had deprived the Agency of statutory authority to issue any order in relation to the lawfully owned or possessed property of the Corporation, seized on August 10, 2012.

The issue was not, as interpreted by Superior Court, Centered on; "Forfeiting Bank Account in varying registrations, (personal, corporate) because of failure to serve the Registered Agent of the Corporation." (See Order Denying Motion, CP #160, pg. 4, para. 3, Attached Exhibit B.)

In the Supplemental Notice of Appeal and Initial Appeal Brief, Potts' argument is focused on Written Notice served on

the Designated hearing by Potts Family Motors Incorporated on December 19, 2013. (CP #112, pgs. 6 thru 12).

On December 19, 2013 Potts Family Motors Incorporated caused written notice to be served on the City of Longview Police Department of the Corporations claim of ownership or right to possess all property seized from the Corporation at 411 Oregon Way on August 10, 2012, and demanded return of its property. (See Written Notice, Attached Exhibit E, See also Transcript of Hearing pgs. 72-73, 77-78, Attached Exhibit C). The Notice was timely and in full compliance with RCW 69.50.505.

RCW 69.50.505 - "If any person notifies the seizing Agency" 'in writing' of the persons right to ownership or right to possession of items specified in subsections 1(b), (d), (e), (f), (g), or (h) of this section within forty-five days of Notice from the seizing agency in the case of personal property, a hearing is required.

This issue was raised in the previous appeal, however, this court declined to address the issue due to lack of evidence in the Appellate Court Record; "Potts also argues that we should vacate the hearing officers forfeiture order because: Notice was served on the hearing officer that the property belonged to Potts Family Motors, and no hearing was held to determine the ownership of the property seized. However, the record is insufficient for us to address this issue." (Cause No. 48410-2-II, pg. 14, subnote 13).

First, at the time the briefs were filed in that Appellate

proceeding, the City still retained the only copy of Written Notice, and Agency Record of the Hearing, required to flesh out the Appellate Court Record on this issue. Further, the City vigorously contested any release of the Court Record or exhibits. (See Motion to Compel Production of Record, CP #65, 05/04/2016), (City's Response to Defendants Motion for Agency Record, CP #66, 05/16/2016), (Declaration of Stephen Manning in; Support of Plaintiffs response, CP #67, 05/16/2016); (Objection to Response, CP #72, 05/27/2016; (Order Denying Motion for Agency Record, CP #74, 06/15/2016, Judge Micheal Evans). Second, since this court ruling, the City has released a Copy of the Agency Record and exhibits, and Appellant is now able to provide a full and complete record for this courts review.

Accordingly, Appellant supplemented the record in Superior Court for a full review, and the supplemental evidence will be before this court on review, On December 6, 2019 Appellant filed a Judicial Notice of Fact and Declaration with Superior Court. (CP #143); and this filing entered into evidence: Exhibit A, Search Warrant for 411 Oregon Way; Exhibit B, Motion Requesting Order of Discovery for Bank Accounts; Exhibit C, Special Inquiry Subpoena Duces Tecum for Red Canoe Credit Union; Exhibit D, (1) Articles of Incorporation for Potts Family Motors Incorporated; (2) Certificate of Incorporation for Potts Family Motors Incorporated, UBI No. 603-165-815; (3) Articles of Amendment; (4) Articles of Correction;

(5) Minutes of the Organizational Meeting of Directors/Shareholders of Potts Family Motors Incorporated; (6) Initial Report; (7) Lease Agreement for 411 Oregon Way with Potts Family Motors Incorporated; Exhibit E, Written Request for Return of Property, served on Hearing Officer December 19, 2013; Exhibit F, Notice of Withdrawal of Thomas Potts and appointment of Sidney A. Potts as Acting President of Potts Family Motors Incorporated.

In review of the newly released evidence, Superior Court should have, but did not, make a determination of the Tellvik II issue, and has left it up to this Court to Make the Ruling on Appeal.

The City does not contest the Corporations claim that on August 10, 2012 City of Longview Police Officers, under perported Authority of a search warrant, cut the locks off the gates at 411 Orgon Way, in order to gain entry and seize approximately 29 vehicles.

Under RCW 69.50.505, all Potts Family Motors had to do to recieve a hearing on the contested property was to file a timely "written notice" with the seizing agency. At that stage of the proceeding, the Corporation was required to provide no further proof of its claim, until the required hearing. "Nothing in the statute requires written notice to contain anything more than contact information so that further proceedings may be scheduled." Snohomish Regional Task Force v. Real Property known as 20803 Poplar Way, Lynwood, Washington, 150 Wn.App. 387, 208 P.3d 1189 (Div.I 2009).

Pursuant to RCW 69.50.505, written notice was sufficient to invoke

the corporation statutory and constitutional right to a hearing, prior to being deprived of its property.

RCW 34.05.413(2) - Commencement, when required. When required by law or constitutional right, and upon timely application of any person, an Agency [shall] commence an adjudicative proceeding.
RCW 34.05.413(4) - If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application to conduct the appropriate adjudicative proceeding, whether or not the applicant expressly requests those proceeding.

The statutory requirements of RCW 69.50.505(3), and RCW 69.50.505(5) require compliance with RCW 34.05.413(2) and RCW 34.05.413(3). The City's failure to comply with statutory requirement is fatal when the Brite Line Rule established in Tellevik II is enforced.

In State v. Tellevik I, 120 Wn.2d 68, 838 P.2d 111; the Court held; "The statute requires a full adversarial hearing with judicial review within 90 days the seizure of real property, if the claimant notifies the agency in [writing]." Tellevik I at 87.

In State v. Tellevik II, 125 Wn.2d 364, 844 P.2d 1319 (1994), that ruling was amended to strike "real property," making written notice requirement and required hearing within 90 days, applicable to seizure of personal property as well.

The Tellevik Court further ruled that if the hearing was not held within 90 days, nothing more was required of applicant, because, RCW 69.50.505, the forfeiture statute, was no longer applicable, and the forfeiture proceeding must be dismissed with prejudice.

Appellant does not know if Superior Court has inadvertently overlooked this issue, which has been in all stages of the Forfeiture Proceedings since written notice was served on the seizing agency on December 19, 2013. Or, if Superior Court simply refuses to acknowledge Appellants pleadings in blind denial that the Supreme Courts Ruling in Tellevik controls in this situation.

This Court declined review of the issue in Appellants last appeal of the Administrative Order of Forfeiture, holding; "Potts also argues that we should vacate the hearing officers forfeiture order and the Superior Courts dismissal order because: the hearing officer did not have personal jurisdiction over the property seized from Potts Family Motors due to the City's failure to provide notice to Potts Family Motors, notice was served on the hearing officer that the property belonged to Potts Family Motors, and no hearing was held to determine the ownership of the property seized. However, the record is insufficient for us to address this issue. The Notice allegedly provided does not exist in the record. Therefore, we decline to address this claim. (Unpublished Opinion No. 48410-2-II, pg. 14, subnote 13).

This court was aware at the time of its Ruling that Potts was attempting to acquire a copy of Potts Family Motors written notice to the hearing officer. The City objected to producing the record, and Superior Court denied the motion to compel production of the record. (CP #74, Judge Evans).

This Court was aware that Potts was attempting to supplement the record with new evidence, "After we accepted review, Potts

filed a motion in the Superior Court to compel the City to produce the agency record for his appeal pursuant to RCW 34.05.566(1). The Superior Court held a hearing on Potts' Motion to Compel and denied the Motion." (Unpublished Opinion No. 48410-2-II, pg. 6, para. 1).

Potts' problem was that there was only one copy of the written notice, and it was in the Agency Record in the City's possession. And Potts could not bring himself to believe that if the City of Longview Police Department found out it was in possession of the only copy, it would still be there when the Agency Record was finally produced for the Court's Review.

Potts should not be punished for the City's refusal to produce evidence needed for Potts' Appeal, and now that the City has provided a full copy of the Agency Record and exhibits, this court should make a full and complete review of the Agency's refusal to comply with statutory requirements and Supreme Court Law established in State v. Tellevik, and grant the relief required by statute and Supreme Court Rules.

Potts Family Motors Incorporated, was and is the only entity with authority or right to claim ownership or right to possess property seized at 411 Oregon Way on August 10, 2012.

At this point Appellant has furnished the Court with certified proof that it was the sole proprietor at 411 Oregon Way on August 10, 2012, and has a personal and Constitutional Right to return of property seized from its premises. After written notice, no further proof was required until a hearing to settle the dispute is held.

In this case, where no hearing was held, despite written notice, the Tellevik Court has ruled that, failure to hold the required hearing renders the Forfeiture Statute RCW 69.50.505 inapplicable, and the Forfeiture Proceeding must be dismissed with prejudice, no further proof required.

In conclusion, this Court should find, that; (1) this issue relates back to the December 19, 2013 Written Notice to the Agency; (2) Failure to hold a hearing within 90 days of written notice has deprived the Agency of Authority to Issue a Forfeiture Order in relation to property seized at 411 Oregon Way on August 10, 2012; (3) The Doctrine of Waiver does not apply here; and (4) Superior Court erred in failing to review a fully briefed and well documented jurisdiction violation of statute and the Supreme Court's Brite Line Rule established in State v. Tellevik.

VI. Superior Court erred in failing to review Appellants Request for Return of the Red Canoe Account, in complete disregard of this Courts holding in Unpublished Opinion No. 48410-2-II, and a misguided belief in the Doctrine of Waiver.

A. It is abundantly clear that Appellants challenge to forfeiture of his Red Canoe Account has been proceeding apace in both Civil and Criminal proceedings since Judge Warnings rule on April 14, 2013, finding that seizure of The Red Canoe Account was unlawful, and this Courts Ruling that; "Here, because the City unlawfully seized the property from Potts' home and the second dealership, the hearing officer could not find that the property was seized pursuant to RCW 69.50.505, which allows officers to seize property without process if done so under search warrant. Without

such a finding, The hearing officer could not order the property forfeited. Therefore, we hold that the forfeiture order relating to property seized from Potts' home and his second dealership was void and vacate those portions of The Order. (Unpublished Opinion No. 48410-2-11, pg. 13, 2nd paragraph.).

It must follow then, that, where Superior Court found seizure of The Red Canoe Account unlawful, this Courts conclusion in No. 48410-2-II, deprived the Agency Hearing Officer of statutory authority to Order Forfeiture of The Red Canoe Account.

Superior Court should have applied this Court Ruling to Judge Warnings Superior Court Ruling and Vacated the portion of the Administrative Order of Forfeiture in Relation to Appellants Red Canoe Account. Further, it should go without saying, the Doctrine of Waiver does not apply here.

B. During Criminal Trial Appellant Requested in Discovery, proof of the city's authority to seize his personal account at The Red Canoe Credit Union.

In response to Discovery Request, the City provided Appellant with an executed copy of a Special Inquiry Subpoena Duces Tecum for Potts Financial Records from The Red Canoe Credit Union, and although it was not directed toward any Law Enforcement Officer, it was executed by Detective Epperson of The Longview Police Department on August 9, 2012. Epperson seized Appellants Financial Records and turned them over to Deputy Prosecutor Phelan, making no return to the Special Inquiry Court.

What the City did not turn over to Appellant in Discovery was

an executed Copy of a Search Warrant for Search and Seizure of Potts Financial Records at The Red Canoe Credit Union by Detective Epperson, on August 10, 2012, on which The City now basis the validity of its claim of lawful seizure of Potts account. (See purported Warrant for Bank Accounts, Attached, Exhibit I).

On August 9, 2012 The Honorable Gary Bashor issued a Special Inquiry Subpoena Duces Tecum, specifically directed to; "The Custodian of Record, Red Canoe Credit Union," and ordered the custodian; "To appear before said Special Inquiry Judge with the records for Potts Personal Account at The Red Canoe Credit Union at 1:00pm on August 25, 2012." (Attached, Exhibit G)

The Subpoena was not addressed to Detective Epperson, or any other peace officer in the Courts' Jurisdiction. As such, Detective Epperson or any other peace officer were specifically excluded from Authority to search or seize Potts' Personal Account on August 9, 2012. "It is improper to require a Credit Union to allow access to, or freeze an account without a valid search warrant, and the warrant must be addressed to and executed by a peace officer, therefore, we hold that funds in a bank account cannot be seized without a valid warrant." State v. Guiterraz-Meza, 191 Wn.App 649, 364 P.3d 1081 (2015).

On March 5, 2013, Potts filed a Motion for Return of the unlawfully seized records and accounts. On May 14, 2013 The Honorable Judge Stephen Warning Ordered Suppression and Return of the bank records, but denied Potts' Request for Return of the unlawfully seized account.

Superior Court Reasoned; "In the context of the Criminal Proceedings, you are entitled to Return of property as long as it is not contraband. Having said that, that doesn't mean that there isn't some parallel proceeding going on and I am not going to make a ruling on that." (See RP pg. 498, Attached Exhibit J; Cause No. 45724-5-II).

At the Forfeiture Proceeding on December 19, 2013, Potts contested Forfeiture of the Red Canoe Account under Judge Warning's Ruling, that it had been unlawfully seized and should also be suppressed in the Forfeiture Proceeding. Deputy Prosecutor Phelan argued that under City of Walla Walla v. 401,333.44, 15 Wn.App 360, 208 P.3d 574 (2009), Judge Warnings Ruling in the Criminal Proceeding does not control in the separate forfeiture proceeding. (See Transcript of Hearing, pgs. 66 thru 68, Attached Exhibit C.

Superior Courts holding in Relation to parallel civil and criminal proceedings concerning this specific case has been overruled. The Court of Appeals held; "While Criminal Proceedings and Civil Forfeiture Proceedings are parallel, they are separate: But Courts have found that a Criminal Ruling, including rulings on legality of seizure, controls in a parallel civil forfeiture proceeding when collateral estoppel applies. Here, collateral estoppel applies." (See Unpublished Opinion No. 48410-2-II, pg. 10).

It must follow then, that where Judge Warning Ruled that seizure of Potts' Red Canoe Records and Account was unlawful, and the Court of Appeals has ruled that Collateral Estoppel applies

here, Superior Courts findings of unlawful seizure applies here, and The Honorable Judge Micheal Evans has ignored The Appellate Court Ruling, "We Reverse The Superior Court order dismissing Potts' Appeal of the Administrative Action forfeiting Potts' property, cash and bank accounts and remand for further proceedings consistent with this opinion." (See Unpublished Opinion No. 48410-2-II, pg. 15). This Court should Reverse Superior Court Dismissal of Potts' Appeal of Forfeiture of his Red Canoe Account, and Remand for further proceedings consistent with this Courts Opinion in Cause No. 48410-2-II, or Vacate The Order in Relation to The Red Canoe Account.

Conclusion

Appellant respectfully requests this Court to find:

1. That; it is legally impossible to apply the Doctrine of Waiver to issue's on Remand for Review by The Appellate Court.

This Court should Reverse the Order of Dismissal of The Motion for Decision on The Merit under The Doctrine of Waiver, and once again, Remand to Superior Court for Review Consistent, with The Courts Opinion in No. 48410-2-II.

2. That, Superior Court abused its Discretion by failing to address Appellants Motion To Vacate for Lack of Statutory Authority or Jurisdiction where, The Agency's failure to provide Notice 7 days prior to The Forfeiture Hearing, denied The Agency Statutory Authority to hold the hearing or come to Final

Judgement. The Administrative Order was void when issued, and a Void Judgement is always subject to Collateral Attack. Bresolin v. Morris, 86 Wn.2d 241, 245, 543 P.2d 325 (1990); "The law requires no showing other than the fact that the defendant was in fact not served with process, and The Void Judgement must be vacated. "Columbia Vally Credit Exchange Inc. v. Bryon Larson, 12 Wn.App. 952, 533 P.2d 152 (Div. III 1975).

This Court should find that Superior Court abused its discretion in failing to address the fully briefed Jurisdictional Issue, Reverse Superior Courts Denial of The Motion To Vacate, and Vacate the Void Administrative Order of Forfeiture in its entirety, for failure to provide Statutory Notice, and acquire Statutory Authority to Proceed.

3. That Superior Court Orders Denying Return of bank accounts was premature, in view of the pending Motion for Discovery for Alleged Search Warrants authorizing search and seizure of accounts. Reverse Superior Courts Denial and Remand for further proceedings as required by Review of the Warrants Requested in Discovery.

4. That, Superior Court erred in Failing to Consider Violation of Supreme Courts Brite Line Rule established in Tellevik II.

This Court should reverse Superior Courts Denial of Appeal, and Vacate the Administrative Order in relation to property seized from Potts Family Motors Inc., on August 10, 2012.

5. That, Superior Courts non-compliance with Judge Warning's Ruling in Crim. No. 12-2-00876-8 and this Courts holding in Cause

No. 48410-2-II, requires reversal of Judge Evans denial of Potts's appeal of the Agency's Administrative Order of Forfeiture in relation to the unlawfully seized Red Canoe Account.

This Court should reverse Judge Evans ruling, and Vacate the Administrative Order of Forfeiture in relation to Potts's personal account at the Red Canoe Credit Union.

DATED THIS 9TH DAY OF Sept. 2020

SIGNED *Sidney A. Potts* pro se
SIDNEY A. POTTS

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DIVISION II

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STATE OF WASHINGTON

BY *W*

WASHINGTON STATE COURT OF APPEALS
DIVISION II

City of Longview Police
Department,
Respondent

-VS-

Sidney A. Potts, pro se
Appellant

No. 54704-0-II

CERTIFICATE OF SERVICE

On this date a true and correct copy fo Appellants
Amended Initial Brief was placed in the United States Mail,
addressed to;

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DATED THIS 3rd DAY OF Sept. 2020

SIGNED *Sidney A. Potts* pro se
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