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NOV 23 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 34025-2

COURT OF APPEALS

DIVISION III

OF

THE STATE OF WASHINGTON

Jason L. Watson,
Appellant

v.

City of Spokane,
Respondent

Appeal from the Superior Court of Spokane County

REPLY BRIEF OF APPELLANT

Attorney for Appellant Jason L. Watson:
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TABLE OF CONTENTS

	Page No.
Table of Authorities	ii
I. Issue Statements	1
II. Statement of the Case	1
III. Argument	1-4
IV. Conclusion	4

TABLE OF AUTHORITIES

<u>Washington Cases</u>	<u>Page Nos.</u>
<i>Moore v. Perrot</i> , 2 Wash. 1 (1891)	3
<i>State v. Brennan</i> , 76 Wn.App. 347 (1994)	3
<i>State v. Haye</i> , 72 Wash.2d 461 (1967)	3
<i>State v. Schaffer</i> , 31 Wash. 305 (1903)	3

<u>Federal Cases</u>	<u>Page Nos.</u>
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994)	2
<i>United States v. Scott</i> , 450 F.3d 863 (9 th Cir. 2005)	2

<u>Other Authorities</u>	<u>Page Nos.</u>
United States Constitution – 5 th Amendment	1

I. ASSIGNMENTS OF ERROR and ISSUE STATEMENTS

1. Whether Appellant was deprived of due process when the hearing examiner failed to provide him with a hearing.
2. Whether the hearing examiner possessed jurisdiction to preside over the matter at all.

II. STATEMENT OF THE CASE

Any facts discussed beyond the Statement of Facts set forth in Appellant's Brief will be noted within the Argument.

III. ARGUMENT

ISSUE 1: The hearing examiner violated Mr. Watson's due process rights when he failed to provide him with a hearing and dismissed his claim.

The City argues that Mr. Watson is mischaracterizing the civil stipulation as a waiver of a constitutional right in a criminal matter, that Mr. Watson was provided his opportunity to be heard in the form of the notice of seizure served simultaneously with a request to sign the stipulation, and that Mr. Watson has not met his burden of showing that the stipulation was signed under coercion.

The City misses the point. Mr. Watson was denied due process because the hearing examiner refused him a hearing altogether. Furthermore, he would have been required to waive his 5th Amendment right in order to present any

testimony of his own regarding the circumstances of the stipulation signature. Alternate testimony regarding those circumstances was available: that of the officer. However, the officer was not present at the hearing. In fact, the hearing was not conducted at all. The hearing examiner denied Mr. Watson's motion for a continuance and granted the City's motion for a dismissal without providing any opportunity to supplement the police report. The report is quite brief, stating that Mr. Watson "said he understood and signed the waiver." No other information regarding Mr. Watson's demeanor or other circumstances surrounding the signature is provided.

While this forfeiture is a civil matter, it is inextricably linked to potential criminal matters, about which Mr. Watson has an absolute right not to testify. He cannot be required, then, to waive that right in order to assert his possessory interest in the monies seized by the Spokane Police Department.

"The 'unconstitutional conditions' doctrine limits the government's ability to exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary." *United States v. Scott*, 450 F.3d 863, 866 (9th Cir., 2005) (citing *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994)). Here, the City conditioned the holding of a hearing on Mr. Watson giving up his right to remain silent. When Mr. Watson did not waive that right, the City removed the benefit – here, the ability to have a hearing regarding a forfeiture action.

The stipulation relied upon by the City here was very brief and included no language to indicate that by signing it, Mr. Watson would be giving up his right to a hearing. Absent testimony and a more detailed stipulation, there is no evidence that the hearing examiner could have relied upon to conclude that Mr. Watson's signature was knowing.

For these reasons, Mr. Watson was deprived of due process where the City's Hearing Examiner dismissed his request for a forfeiture hearing.

ISSUE 2: The Hearing Examiner had no jurisdiction to hear this matter, as "original jurisdiction" rests with Superior Court.

The City ignores the case law holding that those matters specially enumerated in Washington State Constitution's Article IV, section 6 are "not only within the original jurisdiction of superior courts, but also within their *exclusive* jurisdiction." *State v. Brennan*, 76 Wn.App. 347, 351, 884 P.2d. 1343 (Wash. App. Div. I 1994) (quoting *Moore v. Perrot*, 2 Wash. 1, 4-5, 25 P. 906 (1891)) (emphasis added). Furthermore, the legislature cannot give inferior courts concurrent jurisdiction with superior courts. See, e.g., *State v. Haye*, 72 Wash.2d 461, 469, 433 P.2d 884 (1967); *State v. Schaffer*, 31 Wash. 305, 306, 71 P. 1088 (1903). Because this matter involves property worth more than \$3,000, superior court has original and exclusive jurisdiction over the case and that jurisdiction cannot be delegated to an inferior court. The ability to remove a matter to

superior court does not obviate the issue: that a City hearing examiner cannot have jurisdiction over the case in the first place.

V. CONCLUSION

The City hearing examiner here did not have jurisdiction over this matter, and moreover he deprived Mr. Watson of due process by effectively requiring him to waive his right to remain silent in order to have a hearing.

Respectfully submitted this 28th day of November, 2016.


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IN THE COURT OF APPEALS STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON)	No. 34025-2
)	
Respondent)	
)	DECLARATION OF SERVICE
v.)	OF APPELLANT'S REPLY
)	BRIEF
JASON L. WATSON)	
)	
Appellant)	
_____)	

Katharine Allison, sworn under penalty of perjury under the laws of the State of Washington, declares and says the following is true and correct:

On the 28th day of November, 2016, the original of the Appellant's Reply Brief, was hand-delivered to: COURT OF APPEALS DIVISION III, 500 N. CEDAR ST, SPOKANE, WA 99201.

On the 28th day of November, 2016, a copy of the Appellant's Reply Brief, was hand-delivered to: CITY OF SPOKANE, OFFICE OF THE CITY ATTORNEY, 808 W. SPOKANE FALLS BLVD, FLOOR 5, SPOKANE, WA 99201.

Dated this 28th day of November, 2016.



KATHARINE ALLISON