

82491-6

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
No. 08-1-00724

2008 DEC 12 A 8:12

BY RONALD R. CARPENTER

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

vs.

JAMES ESERJOSE

STATEMENT OF GROUNDS FOR DIRECT REVIEW

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton WA 98337
(360) 792-9345

ORIGINAL

TABLE OF AUTHORITIES

Cases

<u>New York v. Harris</u> , 495 U.S. 14, 110, S. Ct. 1640, 109 L.Ed.2d 13 (1990)	2
<u>Payton v. New York</u> , 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed.2d 639 (1980).....	1
<u>State v. Counts</u> , 99 Wn.2d 54, 64, 659 P.2d 1087 (1983)	2
<u>State v. O'Neill</u> , 148 Wn.2d 564, 592, 62 P.3d 489 (2003)	3
<u>State v. Rife</u> , 133 Wn.2d 140 943 P.2d 266 (1997).....	2
<u>State v. Riley</u> , 121 Wn.2d 22, 846 P.2d 1365 (1993).....	2
<u>State v. Young</u> , 123 Wn.2d 173, 867 P.2d 593 (1994).....	2
<u>United State v. Leon</u> , 468 U.S. 897; 104 S. Ct. 3405; 82 L. Ed. 2d 677 (1984).....	2

JAMES ESERJOSE seeks review of the Judgment and Sentence entered by the Kitsap County Superior Court entered on December 5, 2008. The issues presented in the review are:

Mr. Eserjose was illegally arrested in his home in violation of Payton v. New York, infra. He was transported to the police station, read his Miranda rights, and made incriminating statements that were introduced against him at his trial. The trial court concluded that the statements were sufficiently attenuated from his illegal arrest to be admissible under New York v. Harris, infra and declined to find that a different result is compelled by Article 1, Section 7 of the state constitution. Is it a significant question of state constitutional law to determine whether the State should be allowed to introduce evidence obtained as a direct result of an illegal invasion into a person's home?

The reasons for granting direct review are:

In Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed.2d 639 (1980) the United States Supreme Court held that it violates the Fourth Amendment to arrest a person in his home without a warrant or consent to enter. When evidence is obtained incident to the illegal arrest, the normal remedy is suppression of the evidence. This Court has consistently held since Payton that any

statements of the defendant obtained incident to the illegal arrest must be suppressed. State v. Counts, 99 Wn.2d 54, 64, 659 P.2d 1087 (1983).

In New York v. Harris, 495 U.S. 14, 110, S. Ct. 1640, 109 L.Ed.2d 13 (1990) the United States Supreme Court modified the exclusionary rule of Payton to hold that statements of the defendant made at the police station may be sufficiently attenuated from the illegal arrest to permit their admission despite the illegal arrest. No Washington court has yet determined whether Harris is consistent with Article 1, Section 7 of the Washington Constitution. See State v. Riley, 121 Wn.2d 22, 846 P.2d 1365 (1993) (declining to address the issue as it was raised for the first time on appeal).

This Court has in the past consistently declined to erode the exclusionary rule, particularly when the police have illegally invaded the home of the defendant. State v. Young, 123 Wn.2d 173, 867 P.2d 593 (1994). Although the United States Supreme Court has allowed for the admission of evidence obtained in good faith, this Court has declined to adopt such a rule. Compare United State v. Leon, 468 U.S. 897; 104 S. Ct. 3405; 82 L. Ed. 2d 677 (1984) with State v. Rife, 133 Wn.2d 140 943 P.2d 266 (1997). This Court has also refused to apply the inevitable discovery rule after an illegal

arrest because such a rule “undermines” the requirements of Article 1, Section 7 and provides “no incentive for the State” to comply with the Constitution. State v. O’Neill, 148 Wn.2d 564, 592, 62 P.3d 489 (2003).

Under the rationale of Rife and O’Neill, this Court should also decline to apply Harris in Washington. Mr. Eserjose, as found by the trial court after full hearing, was illegally arrested in his home. A rule that allows the State to introduce evidence illegally obtained incident to that arrest provides no incentive for the police to comply with the requirements of Payton. This is a significant issue of first impression in Washington. Both the factual and legal issues were well litigated in the trial court. Direct review is appropriate.

Dated this 11th day of December, 2008.



Thomas E. Weaver
WSBA #22488
Attorney for Appellant