

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Dec 14, 2012, 4:10 pm
BY RONALD R. CARPENTER
CLERK

RB

RECEIVED BY E-MAIL

NO. 87529-4

THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT OF NADDER BARON HAGHIGHI

STATE OF WASHINGTON,

Respondent,

v.

NADDER BARON HAGHIGHI,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

NANCY P. COLLINS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

 ORIGINAL

TABLE OF CONTENTS

A. INTRODUCTION..... 1

B. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED 1

C. STATEMENT OF THE CASE 3

D. ARGUMENT 5

 1. **The inevitable discovery doctrine is inapplicable under article I, section 7 and cannot authorize the admission of improperly seized evidence in violation of Haghghi’s private affairs** 5

 a. *Winterstein* is predicated on privacy protections guaranteed by article I, section 7 and it not a “new rule” 5

 b. State interests control an individual’s rights under article I, section 7 as well as the retroactive application of this Court’s precedent 10

 2. **Alternatively, counsel’s failure to raise a meritorious issue on direct appeal constitutes deficient performance which denied Haghghi his right to effective assistance of counsel**..... 15

 3. **Article I, section 7 requires suppression of Haghghi’s bank records that were seized without authority of law** 21

 a. The court admitted prejudicial evidence in violation of Haghghi’s private affairs under article I, section 7 21

 b. Haghghi timely filed and is entitled to relief in his petition ... 23

F. CONCLUSION..... 26

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

In re Pers. Restraint of Benn, 134 Wn.2d 868, 952 P.2d 116 (1998) . 24, 25

In re Pers. Restraint of Bonds, 165 Wn.2d 135, 196 P.3d 672 (2008) 23, 24

In re Pers. Restraint of Carter, 172 Wn.2d 917, 263 P.3d 1241 (2011).... 24

In re Pers. Restraint of Crace, 174 Wn.2d 835, 280 P.3d 1102 (2012)20, 23

In re Pers. Restraint of Dalluge, 152 Wn.2d 773, 100 P.3d 279 (2004) ... 16

In re Pers. Restraint of Davis, 152 Wn.2d 647, 101 P.3d 1 (2004)..... 25

In re Morris, _ Wn.2d _, _ P.3d _, 2012 WL 5870496 (2012) 16, 17, 18

In re Nichols, 171 Wn.2d 370, 256 P.3d 1131 (2011) 6, 23

Lunsford v. Saberhagen Holdings, Inc., 166 Wn.2d 264, 208 P.3d 1092
(2009)..... 9, 13, 14

State v. Afana, 169 Wn.2d 169, 233 P.3d 879 (2010) 14, 21

State v. Ateshba, 142 Wn.2d 904, 16 P.3d 626 (2001)..... 12

State v. Barker, 143 Wn.2d 915, 25 P.3d 423, 426 (2001) 22

State v. Bonds, 98 Wn.2d 1, 653 P.2d 1024 (1982)..... 22

State v. Canady, 116 Wn.2d 853, 809 P.2d 203 (1991)..... 21

State v. Coates, 107 Wn.2d 882, 735 P.2d 64 (1987) 7

State v. Coyle, 95 Wn.2d 1, 621 P.2d 1256 (1980) 21

State v. Evans, 154 Wn.2d 438, 114 P.3d 627 (2005) 12, 13

State v. Gaines, 154 Wn.2d 711, 116 P.3d 993 (2005)..... 7

<u>State v. Maxfield</u> , 125 Wn.2d 378, 886 P.2d 123 (1994)	16, 17, 18, 20
<u>State v. Miles</u> , 160 Wn.2d 236, 156 P.3d 864 (2007).....	21
<u>State v. Myrick</u> , 102 Wn.2d 506, 688 P.2d 151 (1984)	14
<u>State v. O’Neill</u> , 148 Wn.2d 564, 62 P.3d 489 (2003).....	8, 9, 18
<u>State v. Smith</u> , 119 Wn.2d 675, 835 P.2d 1025 (1992)	7
<u>State v. Snapp</u> , 174 Wn.2d 177, 275 P.3d 289 (2012).....	6, 7
<u>State v. Tibbles</u> , 169 Wn.2d 364, 236 P.3d 885 (2010).....	9
<u>State v. White</u> , 76 Wn.App. 801, 888 P.2d 169 (1995), <u>affirmed on other grounds</u> , 129 Wn.2d 105, 915 P.2d 1099 (1996).....	7
<u>State v. Winterstein</u> , 167 Wn.2d 620, 220 P.3d 1226 (2009) ..	1, 2, 5, 9, 10, 11, 13, 14, 15, 19, 22
<u>York v. Wahkiakum Sch. Dist. No. 200</u> , 163 Wn.2d 297, 178 P.3d 995 (2008).....	6

Washington Court of Appeals Decisions

<u>In re Pers. Restraint of Wilson</u> , 169 Wn.App. 379, 279 P.3d 990 (2012)	24
<u>State v. Feller</u> , 60 Wn.App. 678, 806 P.2d 776, <u>rev. denied</u> , 117 Wn.2d 1005 (1991).....	8
<u>State v. Richman</u> , 85 Wn.App. 569, 933 P.2d 1088 (1997).....	8, 9

United States Supreme Court Decisions

<u>Blakely v. Washington</u> , 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).....	13
--	----

Butler v. McKeller, 494 U.S. 407, 110 S.Ct. 1212, 108 L.Ed.2d 347 (1990)
..... 12

Chevron Oil v. Huson, 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971)
..... 12, 13, 14

Danforth v. Minnesota, 552 U.S. 263, 128 S.Ct. 1029, 169 L.Ed.2d 859
(2008)..... 10, 12

Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)..... 15

Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985)
..... 11

Herring v. United States, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496
(2009)..... 6

Holland v. Florida, 60 U.S. ___, 130 S.Ct. 2549, 17 L.Ed.2d 130 (2010)... 24

Lafler v. Cooper, ___ U.S. ___, 132 S.Ct. 1376, 182 L.Ed. 2d 398 (2012)..... 19

Mayle v. Felix, 545 U.S. 644, 125 S.Ct. 2562, 162 L.Ed.2d 582 (2005).. 25

Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) 6, 7

Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) . 19

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674
(1984)..... 20

Teague v. Lane, 489 U.S. 288, 107 S.Ct. 1060, 103 L.Ed.2d 334 (1989) 10,
11, 12

Federal Court Decisions

Benn v. Lambert, 283 F.3d 1040 (9th Cir. 2002), cert. denied, 537 U.S. 942
(2002)..... 24

United States Constitution

Fourth Amendment 1, 6, 16
Fifth Amendment 7
Sixth Amendment 15

Washington Constitution

Article I, section 7 passim
Article I, section 22 15

Statutes

RCW 10.73.100 15, 16

Court Rules

RAP 16.4 15
RPC 1.1 17
RPC 1.3 18
RPC 1.16 19
RPC Scope 18

Other Authorities

State v. Fair, 502 P.2d 1150 (Ore. 1972) 12

A. INTRODUCTION

The Fourth Amendment's inevitable discovery exception to the exclusionary rule is inapplicable under article I, section 7, and the trial court relied on this theory to permit the State to introduce prejudicial evidence at Nadder Baron Haghghi's trial. Haghghi's counsel on direct appeal did not argue that the inevitable discovery theory was contrary to the state constitution. After the Court of Appeals affirmed Haghghi's convictions, appellate counsel told Haghghi this issue did not merit filing a petition for review.

Weeks after Haghghi's direct appeal ended, this Court held that the notion of inevitable discovery is categorically incompatible with article I, section 7.¹ Haghghi filed a personal restraint petition. The Court of Appeals denied relief, holding that Winterstein was a new rule that it would not retroactively apply and finding Haghghi did not timely add the question of whether his appellate attorney performed deficiently.

B. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED.

1. The court admitted Haghghi's bank records at trial, after finding the records were seized in an unlawful manner, by relying on the theory of

¹ State v. Winterstein, 167 Wn.2d 620, 220 P.3d 1226 (2009).

inevitable discovery. Inevitable discovery is an invention of federal courts that is categorically rejected under article I, section 7. Did the court improperly admit the bank records at Haghghi's trial?

2. In civil cases, a decision from this Court is applied retroactively unless it is a clear break from precedent and the parties relied on the old rule. In criminal cases, federal retroactivity law requires prospective application of new rules that were not clearly dictated by precedent, but state courts are not bound by this federal standard. Winterstein is foreshadowed by this Court's precedent and applies well-established law. Although contrary Court of Appeals decisions existed, they were undermined by cases decided before Winterstein. Based on the state interests at stake in enforcing our constitution, is Winterstein a reasonable application of governing law construing the state constitution that should be applied to a timely filed personal restraint petition?

3. Alternatively, an appellate attorney performs deficiently when he does not raise a meritorious issue on direct appeal. Haghghi's lawyer did not argue that the appellate courts should independently evaluate inevitable discovery under article I, section 7, or advise Haghghi that he should preserve this issue. Did Haghghi receive ineffective assistance of counsel on appeal?

C. STATEMENT OF THE CASE.

Before his trial, Haghighi objected to the State's seizure of his personal records from Allstate Bank. Findings of Fact at 1.² An officer had simply faxed a warrant to an Illinois bank and telephoned to obtain additional records. Id. at 2. The trial court ruled that the police improperly seized these bank records when they disregarded the requirements of lawfully serving the warrant on an out-of-state bank. Id. at 3 (Conclusion of Law D: "the warrant was not legally enforceable").

The trial court ruled the evidence admissible based on the notion of inevitable discovery. Id. at 4-5. Haghighi objected and explained that the Supreme Court has not "adopted the inevitable discovery doctrine as it applies to article I, section 7." 10/24/07RP 47-48.

Haghighi was charged with seven counts of unlawful issuance of bank checks and one count of first degree theft for checks written on his Allstate accounts, based on the theory that Haghighi knew his bank account did not contain funds to cover the checks. The theory was predicated on the seized records from Allstate Bank, 10/29/07RP 5-55; Exs. 1-15. The State offered 77 additional checks taken Haghighi's bank

² The trial court's Written Findings of Fact and Conclusions of Law on CrR 3.6 Motion to Suppress Physical Evidence are attached to the State's Response to Mr. Haghighi's PRP, as Appendix F.

account to show his intent to defraud. 10/24/07RP 57-59, 62; 10/29/07RP 40-43. Haghghi argued the charges should be dismissed because “the records here were unlawfully seized. And without that evidence, there would be no sufficient proof of the crimes charged.” 10/30/07RP 36.

After his conviction, he challenged the admission of his bank records on appeal without making any separate argument under the state constitution. COA 61436-3-I, Brief of Appellant, at 35-42. He merely stated that the Supreme Court “has not yet decided whether the inevitable discovery doctrine applies under article I, section 7 under any set of circumstances.” *Id.* at 38. The Court of Appeals held, “the trial court properly concluded the State would have discovered Haghghi’s bank records” under the rationale of inevitable discovery. 2009 WL 2515775, *7-8 (unpublished).

Haghghi did not file a petition for review. Haghghi’s lawyer told him the inevitable discovery issue was not meritorious and that he would not file a petition for review raising it. See Letter of August 20, 2010 (attached as Appendix A). His lawyer never told him that it was possible the Supreme Court would view inevitable discovery differently than the Court of Appeals or that there was a case pending in the Supreme Court involving inevitable discovery. See Petitioner’s Declaration (App. B);

Declaration of Casey Grannis (App. C). A few weeks later, this Court held that article I, section 7 does not permit courts to admit evidence under the doctrine of inevitable discovery. Winterstein, 167 Wn.2d at 636.

Haghighi promptly filed a personal restraint petition after his original lawyer told him that he could seek relief “in the ends of justice.” Letter to Haghighi (App. D). The Court of Appeals appointed the same attorney to represent him, but that attorney withdrew because “the issue [in] this case is effective assistance of counsel.” Letter to Court (App. E). The Court of Appeals denied the petition, ruling Winterstein did not retroactively apply and Haghighi was time barred from adding the argument that he received ineffective assistance of counsel on appeal.

D. ARGUMENT.

1. The inevitable discovery doctrine is inapplicable under article I, section 7 and cannot authorize the admission of improperly seized evidence in violation of Haghighi’s private affairs

- a. Winterstein is predicated on privacy protections guaranteed by article I, section 7 and it not a “new rule.”

In Winterstein, this Court held that the rationale of inevitable discovery is “incompatible” with article I, section 7 of our Constitution.³ 167 Wn.2d at 636. Inevitable discovery is a construct under federal law,

authorizing the admission of illegally obtained evidence if it “ultimately or inevitably would have been discovered by lawful means.” Id. at 634 (quoting Nix v. Williams, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984)); U.S. Const. amend. IV.⁴

Washington rejects inevitable discovery because the Fourth Amendment is “qualitatively different” from article I, section 7. State v. Snapp, 174 Wn.2d 177, 187, 275 P.3d 289 (2012). The Fourth Amendment focuses on “unreasonable” searches, its protections vary based on evolving standards of reasonableness, and it requires suppression only when it sufficiently serves the purpose of deterring police misconduct. York v. Wahkiakum Sch. Dist. No. 200, 163 Wn.2d 297, 303, 178 P.3d 995 (2008); compare Herring v. United States, 555 U.S. 135, 141, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009) (even if search “was unreasonable [it] does not necessarily mean that the exclusionary rule applies”), with In re Nichols, 171 Wn.2d 370, 375, 256 P.3d 1131 (2011)

³ Article I, section 7 provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

⁴ The Fourth Amendment states,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(“we view our exclusionary rule as constitutionally mandated, exist[ing] primarily to vindicate personal privacy rights”).

Article I, section 7 “is not grounded in notions of reasonableness” or pragmatic considerations. Snapp, at 194, 196. The “authority of law” must justify a search at its inception. Id. at 190.

After the Supreme Court adopted the inevitable discovery doctrine in Nix, this Court did not follow suit. It pointedly noted, “Washington courts have not adopted the inevitable discovery rule.” State v. Smith, 119 Wn.2d 675, 684 n.5, 835 P.2d 1025 (1992). Several cases raising the issue were decided on other grounds. State v. Coates, 107 Wn.2d 882, 886-87, 735 P.2d 64 (1987) (because the evidence was legally seized, “we need not decide the propriety of the inevitable discovery rule” under article I, section 7); State v. Gaines, 154 Wn.2d 711, 716 n.5, 116 P.3d 993 (2005) (same); see also State v. White, 76 Wn.App. 801, 808, 888 P.2d 169 (1995), affirmed on other grounds, 129 Wn.2d 105, 915 P.2d 1099 (1996) (where Court of Appeals cited inevitable discovery doctrine, Court upheld the search on other grounds without discussing inevitable discovery); State v. Warner, 125 Wn.2d 876, 889, 889 P.2d 479 (1995) (mentioning inevitable discovery in *dicta* in, when remanding a case due to a Fifth Amendment violation, without mentioning state constitution).

The Court of Appeals initially rejected the doctrine's application under article I, section 7. State v. Feller, 60 Wn.App. 678, 682, 806 P.2d 776, rev. denied, 117 Wn.2d 1005 (1991) ("We need not address the State's contention that inevitable discovery applies since it has not been adopted in Washington."). It acknowledged that "existing Washington case law does not analyze the inevitable discovery rule under article I, section 7." State v. Richman, 85 Wn.App. 569, 574, 933 P.2d 1088 (1997). But in Richman, treating article I, section 7 as primarily concerned with deterring unlawful police conduct, the Court of Appeals found inevitable discovery consistent with the state constitution. Id. at 575-76.

Richman involved a prosecution for shoplifting where the State could not establish whether the defendant was arrested before the police searched his briefcase. 85 Wn.App. at 572. The court ruled that because the police had plenty of evidence that Mr. Richman was shoplifting, he would have been arrested anyway and "the briefcase would more likely than not have been lawfully searched incident to arrest." Id. at 579.

Several years after Richman, this Court ruled that article I, section 7 does not authorize inevitable discovery as justification for a search incident to arrest. State v. O'Neill, 148 Wn.2d 564, 592, 62 P.3d 489 (2003). The suspect in O'Neill was lawfully detained but not formally

arrested when the police searched his car. Just as in Richman, the prosecution claimed the same evidence would have been inevitably discovered because the officer would have arrested Mr. O'Neill anyway. Id. at 591. The O'Neill Court disagreed. It held that admitting evidence based on speculation that a lawful arrest would have occurred was contrary to the rule under article I, section 7 that the police have the lawful authority to search a person incident to arrest only after formal custodial arrest. See also State v. Tibbles, 169 Wn.2d 364, 370, 236 P.3d 885 (2010) (search cannot be justified simply by having probable cause to arrest).

O'Neill abrogated the underpinnings of Richman. See Lunsford v. Saberhagen Holdings, Inc., 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) (observing “[a] later holding overrules a prior holding sub silentio when it directly contradicts the earlier rule of law”). After O'Neill, the Court of Appeals did not issue any published decisions acknowledging O'Neill's impact on Richman or its progeny.

In Winterstein, the court explicitly overruled Richman. 167 Wn.2d at 635. Relying on the well-established privacy protections of article I, section 7 and the entrenched requirement that “whenever the right is unreasonably violated, the remedy must follow,” the Court held that there is no circumstance in which the State may use inevitable discovery to

justify the admission of evidence that was seized without authority of law. Id. at 632, 635. The trial court and Court of Appeals impermissibly relied on this inapplicable rationale to admit bank records at Haghghi's trial. 10/14/07RP 47; COA 61436-3-I, 2009 WL 2515775 at *8.

- b. State interests control an individual's rights under article I, section 7 and govern the retroactive application of this Court's precedent.

While Winterstein demonstrates the flaw in the trial court's suppression ruling, it rests on established principles and precedent. The Court of Appeals erroneously relied on the retroactivity rules of federal courts to characterize Winterstein a new rule that would bar Haghghi from obtaining relief. If retroactivity analysis is needed to resolve the case, it should rests on the state interests and concerns at stake.

When the United States Supreme Court issues a new rule, its retroactive application to cases on federal habeas corpus review rests on the test set forth in Teague v. Lane, 489 U.S. 288, 311, 107 S.Ct. 1060, 103 L.Ed.2d 334 (1989). Teague does not bind state courts. Danforth v. Minnesota, 552 U.S. 263, 279, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008). It sets a floor below which state courts may not descend when applying decisions by the United States Supreme Court. Id. at 280. It was intended

to “minimize[e] federal intrusion into state criminal proceedings” and “limit the authority of federal courts to overturn state convictions.” Id.

Teague bars federal courts from retroactively applying a constitutional command that did not exist at the time a state court conviction became final. Id. There are two narrow exceptions: if a holding places “certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe,” or establishes “watershed rules” that “implicate the fundamental fairness of the trial,” it must be applied retroactively to all cases. Id. at 307, 312. Teague should not control the outcome of Haghghi’s case, both because Winterstein is not a “new rule” and this Court should determine whether to apply decisions predicated on longstanding state constitutional protections based its own interests, not the interests at stake in Teague.

First, Teague defines a “new rule” as any rule that was not clearly dictated by precedent. 489 U.S. at 301. It is not implicated when using an established legal principle in a different factual circumstance. See, e.g., Francis v. Franklin, 471 U.S. 307, 326-27, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985) (example of construing principle announced in prior case and applying it to different facts). But in keeping with Teague’s focus on limiting its interference with state court decisions, a rule may be “new”

under Teague even if it was controlled or governed by prior law. Butler v. McKeller, 494 U.S. 407, 415, 110 S.Ct. 1212, 108 L.Ed.2d 347 (1990).

States “are free to choose the degree of retroactivity or prospectivity which [states] believe appropriate to the particular rule under consideration, so long as [courts] give federal constitutional rights at least as broad a scope as the United States Supreme Court requires.” Danforth, 552 U.S. at 276 (quoting with approval, State v. Fair, 502 P.2d 1150, 1152 (Ore. 1972)). In Danforth, the Court invited states to create their own retroactivity standards based on state interests. Id. at 280.

This Court has acknowledged that changes in state law need not be governed by Teague. State v. Evans, 154 Wn.2d 438, 449, 114 P.3d 627 (2005). Yet it has not generally applied a different standard in criminal cases. Id. at 444; but see State v. Ateshba, 142 Wn.2d 904, 916, 16 P.3d 626 (2001) (employing factors from Chevron Oil v. Huson, 404 U.S. 97, 106-07, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971), to decide whether appellate decision applied retroactively).

Because Winterstein rests on an application of well-established law and is based on the independent protections afforded by article I, section 7 from its inception, it should not be treated as a “new rule” for retroactivity purposes.” If it is deemed a “new rule,” Haghighi’s case presents the ideal

vehicle for applying a standard of retroactivity that rests on this state's interests when enforcing the guarantees of state constitutional law. Unlike Evans, which involved whether to retroactively apply the United States Supreme Court decision in Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), Haghghi's claim rests solely on the state constitution and arises from this Court's precedents.

In civil cases, this Court applies a new decision "retroactively unless expressly stated otherwise in the case announcing the new rule of law." Lunsford, 166 Wn.2d at 271. The reason for this retroactivity standard is that a new rule is created only after considered determination that principles of *stare decisis* merit establishing a different rule. Id.

This Court has followed the Chevron Oil test when deciding whether a new rule should be prospective.⁵ Prospective application is appropriate when the Court "overruled clear precedent"; policy objectives

⁵ The Chevron Oil test provides:

[A] court may depart from the presumption of retroactivity to give a new decision either prospective or selectively prospective application [where]: (1) the decision established a new rule of law that either overruled clear precedent upon which the parties relied or was not clearly foreshadowed, (2) retroactive application would tend to impede the policy objectives of the new rule, and (3) retroactive application would produce a substantially inequitable result. [Chevron Oil, 404 U.S. at 106-07].

Lunsford, 166 Wn.2d at 271-72.

of the new rules are not served by retroactive application; and retroactivity causes substantial inequities. Id. at 273.

Winterstein is consistent with precedent from this Court and was clearly foreshadowed by the precedent that it extends. The policy objective of article I, section 7 is to protect “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant,” State v. Myrick, 102 Wn.2d 506, 510-11, 688 P.2d 151 (1984), which is served by retroactively applying the rights protected by article I, section 7 in a timely filed petition. There is no “good faith” exception to article I, section 7, and there was no good faith reliance on the doctrine of inevitable discovery in the case at bar. See State v. Afana, 169 Wn.2d 169, 184, 233 P.3d 879 (2010) (“good faith” by police does not justify unlawful search under article I, section 7).

The Rules of Appellate Procedure encourage this Court to apply new decisions retroactively where a “significant” change in the law is material to the conviction and either the court or legislature find “sufficient reasons” for retroactive application. RAP 16.4 (c)(4); RCW 10.73.100(6).⁶ Based on Washington’s long history of independently

⁶ RAP 16.4 (c)(4) provides that a person is entitled to receive relief from a conviction if:

interpreting the right to privacy under the state constitution and ordering exclusion of improperly seized evidence as the remedy, this Court's determination of the scope of the exclusionary rule as explained in Winterstein and the cases that precede it reasonably govern this petition. As discussed in section 3, *infra*, application of article I, section 7 to Haghghi's case requires exclusion of the unlawfully seized evidence.

2. Alternatively, counsel's failure to raise a meritorious issue on direct appeal constitutes deficient performance which denied Haghghi his right to effective assistance of counsel

A criminal defendant has a right to effective assistance of counsel on appeal. Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); In re Pers. Restraint of Dalluge, 152 Wn.2d 772, 787, 100 P.3d 279 (2004); U.S. Const. amend. VI; Const. art. I, § 22.

To establish ineffective assistance of appellate counsel, a petitioner must establish that (1) counsel's performance was deficient and (2) the deficient performance actually prejudiced the defendant.

In re Morris, _ Wn.2d __, __P.3d __, 2012 WL 5870496 (Nov. 21, 2012)

(internal citations omitted).

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, ... and sufficient reasons exist to require retroactive application of the changed legal standard. RCW 10.73.100(6) uses the same standard as an exception to the one-year deadline for filing a personal restraint petition.

If an appellate attorney “failed to raise an issue with underlying merit, then the first prong of the ineffective assistance test is satisfied.” Dalluge, 152 Wn.2d at 787 (citing In re Pers. Restraint of Maxfield, 133 Wn.2d 332, 945 P.2d 196 (1997)).

In Maxfield, the attorney on direct appeal argued that a search of electricity records was unconstitutional under the Fourth Amendment and article I, section 7, but did not brief the Gunwall factors required to demonstrate an independent state constitutional violation. 133 Wn.2d at 336. The court refused to analyze the article I, section 7 claim due to Mr. Maxfield’s failure to discuss the Gunwall criteria. State v. Maxfield, 125 Wn.2d 378, 394, 886 P.2d 123 (1994).

Mr. Maxfield filed a personal restraint petition presenting the Gunwall analysis absent from the direct appeal and arguing that his appellate attorney was ineffective for failing to adequately brief the Gunwall factors. 133 Wn.2d at 344. This Court agreed that “the legal issue which appellate counsel failed to raise had merit” and this failure constituted deficient performance. Id.

Similarly, in Morris, counsel on direct appeal did not argue a public trial violation occurred when the court conducted a portion of jury selection in chambers. 2012 WL 5870496 at *4. At the time of the direct

appeal, this Court had not yet explicitly ruled that in-chambers questioning of jurors violated the right to a public trial. Id., at *4-5. However, the Court had signaled that such conduct was unconstitutional when finding constitutional error if a court orders spectators out of the courtroom to make room for potential jurors during voir dire without conducting the required inquiry.⁷ There could be no reasonable strategy in failing to raise a potentially meritorious issue. Id. Appellate counsel's failure to recognize that in-chambers jury voir dire was an unconstitutional courtroom closure constituted deficient performance. Id.

As Maxfield and Morris demonstrate, attorneys are required to be familiar with developments in the law. RPC 1.1, cmt. 6 (“a lawyer should keep abreast of changes in the law and its practice”). A lawyer’s duty to “act with reasonable diligence” requires the attorney to “take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor” within the boundaries of professional discretion. RPC 1.3, cmt. 1. The Rules of Professional Conduct “are evidence of what should [or must] be done.” RPC Scope [14].

⁷ In re Personal Restraint of Orange, 152 Wn.2d 795, 814, 100 P.3d 291 (2004). In Orange, this Court found an appellate attorney’s performance deficient for failing to raise the improper closure of jury voir dire on direct appeal, relying on precedent prohibiting the court from closing a pre-trial suppression hearing to the public.

Haghighi's attorney on direct appeal did not raise a meritorious issue. Like Maxfield, the attorney's brief acknowledged that the Supreme Court had "not yet decided" whether inevitable discovery "applied under article I, section 7 under any set of circumstances," citing O'Neill, yet made no separate argument under article I, section 7. COA 61436-3-I, Brief of Appellant, p. 38.

Similarly to Morris, appellate counsel should have known that the independent application of article I, section 7 was potentially meritorious. O'Neill dictated this result and Maxfield explains that competent counsel must look to both the state and federal constitutions when identifying the constitutional guarantees at stake in a criminal case. Haghighi's trial attorney had specifically objected to admission of the improperly seized bank records on the ground that the Washington Supreme Court has not adopted "the inevitable discovery doctrine." 10/24/07RP 47-48.

A lawyer must explain matters sufficiently to permit the client to make informed decisions. RPC 1.4(b). At the time Haghighi's appeal became final, Winterstein had been briefed and argued in the Supreme Court.⁸ The fact that the case involved inevitable discovery, and review

⁸ Supreme Court briefs are available for the public to view on its website, www.courts.wa.gov. Winterstein was argued in the Supreme Court on February 26, 2009. See <http://templeofjustice.org/2009/state-v-winterstein/> (last accessed Dec. 12, 2012).

had been granted, was mentioned in the State's Response Brief on direct appeal. Brief of Respondent, p. 35. Yet appellate counsel advised Haghghi that the inevitable discovery issue had no merit, and declined to file a petition for review on that basis. See App. A.

While an appellate attorney is not mandated to file a petition for review, he is required to explain the consequences of failing to file such a petition to his client, so that the client does not suffer material adverse consequences. RPC 1.16(b)(1). A criminal defendant necessarily relies on the advice of counsel and "cannot be presumed to make critical decisions without counsel's advice." Lafler v. Cooper, __ U.S. __, 132 S.Ct. 1376, 1385, 182 L.Ed. 2d 398 (2012). An attorney's failure to inform a client about critical information is just as much a deprivation of competent counsel as affirmative misadvice. Padilla v. Kentucky, __ U.S. __, 130 S.Ct. 1473, 1484, 176 L.Ed.2d 284 (2010).

Haghghi's appellate attorney failed to raise a meritorious issue for no reasonable strategic purpose. Haghghi would have filed a petition on his own if he understood the consequences of failing to do so or that some possibility of relief existed. See App. B (Declaration).

Counsel failed to pursue this issue even though the briefs filed in the Court of Appeals show he was aware that the Supreme Court had

signaled it did not view the inevitable discovery doctrine as compatible with our Constitution and the issue was pending in the Washington Supreme Court. App. Brf. at 38; Resp. Brf. at 35. The attorney's failure to raise, preserve, or advise Haghighi of the need to preserve the issue constitutes deficient performance. Maxfield, 133 Wn.2d at 344.

An attorney's deficient performance is prejudicial when there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." In re Pers. Restraint of Crace, 174 Wn.2d 835, 840, 280 P.3d 1102 (2012) (quoting Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). Due to the central nature of the improperly obtained bank records as evidence at trial, had counsel's raised and pursued a meritorious claim under the state constitution the result of the appeal and trial would have been different as discussed below.

3. Article I, section 7 requires suppression of Haghghi's bank records that were seized without authority of law.

- a. The court admitted prejudicial evidence in violation of Haghghi's right to be free from unlawful intrusion into his private affairs under article I, section 7.

Bank records contain intimate details of a person's life and cannot be searched by the State absent lawful authority. State v. Miles, 160 Wn.2d 236, 244-46, 156 P.3d 864 (2007) ("a person's banking records are within the constitutional protection of private affairs."). When a police officer seizes such personal information without authority of law, "any evidence seized unlawfully will be suppressed." Afana, 169 Wn.2d at 180. Authority of law includes not only a warrant, but also complying with procedures governing the execution of a warrant. State v. Coyle, 95 Wn.2d 1, 14, 621 P.2d 1256 (1980) (suppression is proper remedy for violations of Washington's statutory knock-and-wait rule, even when police have warrant); State v. Canady, 116 Wn.2d 853, 857, 809 P.2d 203 (1991) (warrant does not give police the authority of law to seize evidence if issued by a judge who lacks legal authority to issue such a warrant).

The trial court ruled that the police acted without lawful authority when demanding Allstate bank provide it with Mr. Haghghi's personal records because, even though they had a warrant, they did not lawfully

execute it. Findings of Fact at 3. This was an incorrect statement of the law. A violation of the requirement that the police have authority of law, including statutory authority, before intruding upon an individual's private affairs "requires suppression of the evidence obtained." State v. Barker, 143 Wn.2d 915, 922, 25 P.3d 423, 426 (2001).

In its response brief, the State claimed that State v. Bonds, 98 Wn.2d 1, 653 P.2d 1024 (1982), saves the fruits of the illegal search. While the court in Bonds declined to suppress statements gathered after an illegal arrest, it stressed the narrow scope of its holding. Id. at 14 ("we reiterate our determination to exercise our supervisory powers to exclude evidence for such violations in the future"). Winterstein explained Bonds is an "exceptional case" and does not limit its categorical rejection of inevitable discovery under article I, section 7. 167 Wn.2d at 633.

The Allstate bank records were the center point of the State's case against Haghghi and were introduced in bulk and in detail at trial. See Exs. 2-15. Beyond the individual checks used to establish the charged offenses, the State introduced 77 other checks under ER 404(b). 10/24/07RP 57-58, 62, 10/29/07RP 7-61. The State's theory rested on the jury cumulating the evidence from the Allstate bank records as a "total picture" of his purported intent to defraud by writing checks when his

bank account records showed he did not have the funds to pay the promised amounts. 10/30/07 RP 40, 82, 84-85.

The court's erroneous application of the inevitable discovery theory resulted in the admission of critical evidence used to convict Haghghi. He was actually and substantially prejudiced by the failure to correctly apply article I, section 7 to his case, as well as by his attorney's failure to raise the issue on appeal. Crace, 174 Wn.2d at 842, 846-47.

b. Haghghi timely filed and is entitled to relief in his petition.

Haghghi properly challenges the erroneous suppression order in his timely filed petition. See Nichols, 171 Wn.2d at 375. Alternatively, the Court of Appeals declined to reach Haghghi's claim of ineffective assistance of counsel because he added this issue to his petition after one year time line for filing a PRP, citing In re Pers. Restraint of Bonds, 165 Wn.2d 135, 196 P.3d 672 (2008).

Bonds is inapposite. In Bonds, the original petition raised a confrontation clause issue but he later added an entirely distinct issue involving the right to a public trial. 165 Wn.2d at 138. This Court

concluded that after the one-year time for filing passed, a new legal complaint could be added only under the standards of equitable tolling.⁹

Bonds relied on Benn,¹⁰ a case where the defendant tried to add a jury instruction challenge to his PRP long after the deadline for filing a petition had passed. The Benn Court rejected his request as both untimely and unmeritorious. 134 Wn.2d at 938-41. Instructively, the Court permitted Benn to add other issues to his PRP involving factual developments that occurred while it was pending. Id.

Unlike Bonds, or the jury instruction issue in Benn, Haghghi did not inject a distinct new legal claim into his PRP. Instead, he was adding an alternative theory of relief to the claim already presented. A similar issue arose in In re Pers. Restraint of Wilson, 169 Wn.App. 379, 387-88, 279 P.3d 990 (2012). The Wilson Court rejected the State's argument that ineffective assistance of counsel was distinct from the instructional issue

⁹ The definition of equitable tolling in Bonds did not garner a majority rule, as explained in In re Carter, 172 Wn.2d 917, 929, 263 P.3d 1241 (2011). Subsequently, the United States Supreme Court explained that equitable tolling is inherently "flexible" and requires "courts to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices." Holland v. Florida, 60 U.S. ___, 130 S.Ct. 2549, 2562, 17 L.Ed.2d 130 (2010). If equitable tolling is required here, the standard should be based on the interest of justice.

¹⁰ In re Pers. Restraint of Benn, 134 Wn.2d 868, 882, 884, 952 P.2d 116 (1998), rev'd sub. nom Benn v. Lambert, 283 F.3d 1040 (9th Cir. 2002), cert. denied, 537 U.S. 942 (2002).

raised in Wilson's original petition. "A 'new' issue is not created merely by supporting a previous ground for relief with different factual allegations or with different legal arguments." Id.; see In re Pers. Restraint of Davis, 152 Wn.2d 647, 671, 101 P.3d 1 (2004) (casting a claim as ineffective assistance "does not create a new ground for relief").

Similarly to Benn or Wilson, Haghghi should be permitted to raise an argument that shares the same legal core as the original claim. Additionally, the equities favor consideration of the claim. Haghghi's attorney misled him by advising him that he could base his PRP on "the ends of justice," which he did, yet the ends of justice are not a basis for relief in a PRP. See App. E (letter from counsel). Haghghi was not copied on the letter counsel sent to the Court of Appeals saying that "the issue" in the case "was ineffective assistance." See App. D (letter to court). Haghghi was diligent in filing his petition and did not know his attorney's deficient performance, thus he should be permitted to include this argument in his timely filed petition.

Alternatively, federal courts allow a related claim, tied to a common core of operative facts, to be added at a later date. Mayle v. Felix, 545 U.S. 644, 664, 125 S.Ct. 2562, 162 L.Ed.2d 582 (2005) ("[s]o long as the original and amended petitions state claims that are tied to a common

core of operative facts, relation back will be in order”). This Court should adopt a similar standard.

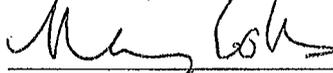
Haghighi received ineffective assistance of counsel on appeal and he is actually and substantially prejudiced by the lower courts’ failure to correctly apply article I, section 7 to his case. These errors require a new trial without the benefit of illegally obtained evidence.

F. CONCLUSION.

For the foregoing reasons, Mr. Haghighi respectfully requests this Court hold that the court violated his right to be free from intrusions into his private affairs that are not authorized by law.

DATED this 14th day of December 2012.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Petitioner

APPENDIX A

LAW OFFICES OF
NIELSEN, BROMAN & KOCH P.L.L.C.

ERIC J. NIELSEN
ERIC BROMAN
DAVID B. KOCH
CHRISTOPHER H. GIBSON

1908 E. MADISON STREET
SEATTLE, WASHINGTON 98122
Voice (206) 623-2373 Fax (206) 623-2488
WWW.NWATTORNEY.NET

DANA M. LIND
JENNIFER M. WINKLER
ANDREW P. ZINNER
CASEY GRANNIS
JENNIFER J. SWEIGERT

OFFICE MANAGER
JOHN SLOANE

LEGAL ASSISTANT
JAMILAH BAKER

OF COUNSEL
K. CAROLYN RAMAMURTI
JARED B. STEED

August 20, 2009

Baron Nadder Haghighi
No. 7211125
Monroe Correctional Complex
Minimum Security Unit
P.O. Box 7001
16700 177th Ave SE
Monroe, WA 98272

Re: State v. Haghighi (No. 61436-3-I)

Dear Mr. Haghighi:

I consulted my colleagues about whether our office will file a petition for review on your behalf. My office is willing to conditionally file a petition for review raising one issue: the trial court violated your due process rights in failing to hold an adequate hearing on your competency to stand trial. Let me explain. A similar issue on competency is currently pending in the Supreme Court in the case of State v. Heddrick. If the Heddrick decision comes out before the deadline for filing a petition for review in your case, and that decision undermines the issue in your case, then we will not file a petition for review. If the Heddrick decision does not come out before the deadline, or if the decision does come out and it helps your case, then my office is willing to file a petition for review raising the competency issue only.

In our judgment, the other issues raised in the Court of Appeals do not merit a petition for review, either because they are unlikely to be granted review or because you are unlikely to win in the Supreme Court if review were granted.

Only one petition for review may be filed. If you want to raise additional issues, you may file your own petition for review or hire a private attorney to do it for you. If you decide to do that, my office will not file a petition for review. As I wrote in my last letter, the petition for review must be filed within **30 days** of the Court of Appeals decision.

Please let me know by September 4 what you want to do. In making that decision, please be aware I am not sure what would happen if you were to win on the competency issue in the Supreme Court. That is because the law in this area is unsettled. I anticipate that the most likely outcome in your case, even if you were to win in the Supreme Court on the competency issue, is that your case would be sent back to the trial court for a proper hearing on the issue of whether you were competent to stand trial. If the trial court were to find you were competent (and assuming any appeal of that finding were to lose), then you would not receive a new trial.

Please contact me and let me know what you want to do. If I do not hear from you by September 4, I will assume that you want my office to file a petition for review on your behalf raising the competency issue.

I spoke with your mother today on the phone about the Court of Appeals decision and the options for challenging that decision. She asked that I let you know that.

Sincerely,



Casey Grannis
Attorney at Law

05-01-2011

RECEIVED

MAY 05 2011

Washington Appellate Project

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE: PERSONAL RESTRAINT)	No. 65130-7-I
OF:)	
)	PETITIONER'S
)	DECLARATION
)	
NADDER BARON HAGHIGHI,)	
Petitioner.)	

I am the petitioner the above-captioned personal restraint petition.
 I hereby swear and affirm the following is true to the best of my
 recollection:

I was represented by Casey Grannis in COA No. 61436-3-I.

When the Court of Appeals issued its decision in my direct appeal,
 I received a copy of the decision.

My attorney did not tell me that there were any pending cases in
 the Supreme Court involving the doctrine of inevitable discovery.

The doctrine of inevitable discovery was an important issue in my
 appeal and my trial.

If I had known that there was a chance that the Court of Appeals
 ruling on inevitable discovery might be affected by any pending Supreme
 Court cases, I would have filed a petition for review.



 NADER BARON HAGHIGHI
 04-29-2011

 DATE

APPENDIX B

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN RE: PERSONAL RESTRAINT)	No. 65130-7-I
OF:)	
)	DECLARATION OF
)	CASEY GRANNIS
NADDER BARON HAGHIGHI,)	
Petitioner.)	

I, Casey Grannis, hereby swear and affirm the following is true to the best of my recollection:

1. I was the attorney who represented Mr. Haghghi in his direct appeal, COA No. 61436-3-I.
2. I raised an issue in the appeal involving whether the trial court properly applied the inevitable discovery doctrine to admit evidence that was illegally seized by the police.
3. The Court of Appeals issued a decision ruling, in part, that the evidence was properly admitted under the inevitable discovery doctrine.
4. At the time I filed the appeal, I was aware there was prior Supreme Court case law questioning whether the inevitable discovery doctrine applied under our state's constitution.
5. I do not recall whether I knew that the case of State v. Winterstein was pending in the Supreme Court on the issue of inevitable discovery at the time the Court of Appeals issued its decision.

6. After the Court of Appeals decision, I told Mr. Haghighi that he had the right to file a petition for review.

7. I did not tell him that there was a case pending in the Washington Supreme Court involving inevitable discovery.

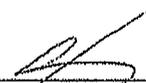
8. I discussed Mr. Haghighi's case with colleagues regarding whether I should file a petition for review but I do not remember whether we discussed the suppression issue.

9. I did not file a petition for review raising any issues in the Supreme Court.

10. Even if I knew Winterstein was pending in the Supreme Court on the issue of inevitable discovery, I would not have filed a petition for review. I did not think this was a good vehicle for challenging inevitable discovery because there was a warrant.

11. I did not encourage Mr. Haghighi to file a petition for review to preserve the issue of inevitable discovery.

12. Based on my familiarity with the record, I believe that the evidence seized from the Allstate bank in Illinois was critical to the State's case and it would have been hard for the State to prove its case if the evidence had been suppressed.



CASEY GRANNIS

DATE May 11, 2011

APPENDIX D

Released To

Feb-04-2010

ERIC J. NIELSEN
ERIC BROMAN
DAVID B. KOCH
CHRISTOPHER H. GIBSON

LAW OFFICES OF
NIELSEN, BROMAN & KOCH P.L.L.C.

1908 E. MADISON STREET
SEATTLE, WASHINGTON 98122
Voice (206) 623-2373 Fax (206) 623-2488
WWW.NWATTORNEY.NET

Received -
December 24, 2009

Exhibit # 1

DANA M. LIND
JENNIFER M. WINKLER
ANDREW P. ZINNER
CASEY GRANNIS
JENNIFER J. SWEIGERT

OFFICE MANAGER
JOHN SLOANE

LEGAL ASSISTANT
JAMILAH BAKER

OF COUNSEL
K. CAROLYN RAMAMURTI
JARED B. STEED

12 of 19 pages

December 22, 2009

Baron Haghghi
No. 7211125
Monroe Correctional Complex
P.O. Box 7001
16700 177th Ave SE
Monroe, WA 98272

Released To:

Filed (Hamban) records of this to be
submitted to Mr. Zuckerman
Nussbaum Dec 29-2009

Re: State v. Haghghi (No. 61436-3-I)

For further proceedings

Dear Mr. Haghghi:

As you know, my representation on your direct appeal is finished and I am no longer your attorney. I write, however, to direct your attention to a recent Washington Supreme Court decision that could have an impact on your case.

Earlier this month, the Supreme Court in State v. Winterstein struck down the inevitable discovery exception to the exclusionary rule as being incompatible with the Washington Constitution. A copy of that decision is included with this letter. This decision is a major change in the law.

The Court of Appeals in your case affirmed the trial court's denial of your suppression motion on inevitable discovery grounds. You did not seek review of the Court of Appeals decision in the Supreme Court. Your direct appeal is over and you cannot directly challenge the Court of Appeals decision.

However, you may be able to raise the suppression issue in a personal restraint petition (PRP), citing Winterstein as a change in the law that requires the appellate court to address the merits of your claim to further the "ends of justice." Remember, the general rule is that you only get to file one PRP. It must generally be filed within one year from the date on which the mandate for your direct appeal issued.

As you know, you do not have the right to assigned counsel for the purpose of filing a PRP. Assuming you have not hired a private attorney, you will need to file the PRP by yourself. The reviewing court will take a look at it and will probably assign counsel to you if it believes the PRP has merit.

③ of ⑨ pages

I hope you find this information informative.

Sincerely,



Casey Grannis
Attorney at Law

enc.

APPENDIX E

ERIC J. NIELSEN
ERIC BROMAN
DAVID B. KOCH
CHRISTOPHER H. GIBSON

OFFICE MANAGER
JOHN SLOANE

LAW OFFICES OF
NIELSEN, BROMAN & KOCH, P.L.L.C.

1908 E MADISON ST.
SEATTLE, WASHINGTON 98122
Voice (206) 623-2373 · Fax (206) 623-2488

WWW.NWATTORNEY.NET

LEGAL ASSISTANT
JAMILAH BAKER

DANA M. LIND
JENNIFER M. WINKLER
ANDREW P. ZINNER
CASEY GRANNIS
JENNIFER J. SWEIGERT

OF COUNSEL
K. CAROLYN RAMAMURTI
JARED B. STEED

January 6, 2011

Richard Johnson
Court of Appeals, Division One
One Union Square
600 University Street
Seattle, WA 98101-4170

Re: *State v. Nadder Haghghi*, COA No. 65130-7-I
King County Sup. Ct.: 06-1-10032-4 KNT

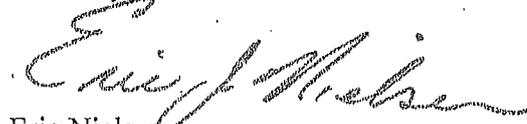
Dear Mr. Johnson:

I write to alert you to the existence of a conflict in a recent appointment. Our office was appointed on 12/22/2010 in the above-mentioned case. However the issue of this case is ineffective assistance of counsel regarding one of our attorneys. Therefore, this office requests that new appellate counsel be appointed in *State v. Haghghi*, No. 65130-7-I.

We already have made a copy of the superior court file in *State v. Haghghi*, which we would be willing to forward to his/her new appellate counsel. An extra copy of this letter is attached so you can forward it to the new appellate counsel.

Thank you for your consideration of this matter and we await your reply.

Sincerely,



Eric Nielsen
Nielsen, Broman & Koch
Attorneys for Appellant

Encl.: Copy for new counsel

OFFICE RECEPTIONIST, CLERK

To: Maria Riley
Cc: 'PAOAPPELLATEUNITMAIL@KINGCOUNTY.GOV'
Subject: RE: 875294-HAGHIGHI-BRIEF

Rec'd 12-14-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Maria Riley [<mailto:maria@washapp.org>]
Sent: Friday, December 14, 2012 4:00 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'PAOAPPELLATEUNITMAIL@KINGCOUNTY.GOV'
Subject: 875294-HAGHIGHI-BRIEF

In Re the PRP of Nadder Haghighi
No. 87529-4

Please accept the attached documents for filing in the above-subject case:

Supplemental Brief of Petitioner

Nancy P. Collins - WSBA #28806
Attorney for Petitioner
Phone: (206) 587-2711
E-mail: nancy@washapp.org

By

Maria Arranza Riley
Staff Paralegal
Washington Appellate Project
Phone: (206) 587-2711
Fax: (206) 587-2710
www.washapp.org

CONFIDENTIALITY NOTICE: This email, including any attachments, may contain confidential, privileged and/or proprietary information which is solely for the use of the intended recipient(s). Any review, use, disclosure, or retention by others is strictly prohibited. If you are not an intended recipient, please contact the sender and delete this email, any attachments and all copies.