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**A. INTRODUCTION**

William Kipp requests this court to overturn the decision of the Court of Appeals, Division II in *State of Washington v. William John Kipp, Jr.*, filed October 2, 2012, No. 39750-1-II regarding the suppression of evidence under the Privacy Act, RCW 9.73. et al.

The conversation between Mr. Kipp and Mr. Tan as recorded by Mr. Tan and admitted into evidence during trial was a private conversation protected under the provisions of RCW 9.73 and Washington State case law. It may not be used as evidence, RCW 9.73.050.

In reviewing the trial court's decision to admit the recording, the Appellate Court applies the wrong standard of review, misinterprets prior Supreme Court rulings, and thereby eviscerates the Washington State Privacy Act.

Mr. Kipp requests that the Supreme Court suppress the surreptitious tape recording and remand the case for a new trial without the recording and without any other evidence obtained at the same time of the recording, as held under *State v. Fjermestad*, 114 Wn.2d 828 836, 791 P.2d, 897(1990).

**B. ASSIGNMENTS OF ERROR**

Mr. Kipp made detailed assignments of error in his opening brief of appellant at pages 1-2, and relies upon those assignments.

**C. ISSUES PRESENTED FOR REVIEW**

1. Whether the Court of Appeals erred when, in analyzing the standard of review for a suppression motion heard by the trial court on stipulated facts, without testimony, it applied the substantial evidence standard of review, instead of reviewing de novo?
2. Whether the trial court and Court of Appeals erred when, under the Washington State Privacy Act RCW 9.73. et al, they failed to suppress the nonconsensual recording of a highly incriminating conversation between family members who were alone for over ten minutes in the upstairs kitchen of a private residence, and instead admitted the recording into evidence?

**D. STATEMENT OF THE CASE**

First, Mr. Kipp has provided a detailed statement of his case in both his petition and in appellate brief; however, in this supplemental brief he wants to focus on the historical and current scope of privacy and the reasonable expectations of privacy in Washington and how that relates to Washington State Privacy Act 9.73 RCW.

Secondly, Mr. Kipp wants to address why a statement given under duress, such as his recorded statement, is an indication that the statement should be viewed as private.

## E. ARGUMENT

1) THE MR. KIPP'S CONVERSATION, WHICH WAS SECRETLY RECORDED SHOULD BE CONSIDERED PRIVATE IN WASHINGTON STATE, GIVEN THIS STATE'S HISTORICAL AND CONTINUED EMPHASIS ON RIGHTS' OF PRIVACY ACCORDED OUR CITIZENS.

Mr. Kipp would argue that a determination of a what is encompassed by a reasonable expectation of privacy must include not only the dictionary definition, but include as context the way Washington State has viewed privacy and interpreted privacy over the years.

Personal privacy has been an issue for societies for centuries.<sup>1</sup> Mr. Kipp argues that societal context or norms can often influence or even be

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<sup>1</sup> James A. Pautler, in his NOTE: You Know More Than You Think: State v. Townsend, Imputed Knowledge, and Implied Consent Under the Washington Privacy Act, 28 Seattle Univ. L. R. 209, 212 (2004) provided some interesting sources that did research on this issue, documenting laws approximately 2000 years old addressing privacy concerns.

Privacy is at the very soul of being human. [FN21 WHITFIELD DIFFIA & SUSAN LANDAU, PRIVACY ON THE LINE, THE POLITICS OF WIRETAPPING AND ENCRYPTION 126 (1998).] Privacy, or the Right to Be Let Alone, is perhaps the most personal of all legal principles. [FN22 MORRIS L. ERNST & ALAN U. SCHWARTZ, THE RIGHT TO BE LET ALONE 1 (1977).] Although some argue that privacy is a product of modern culture, [FN23, *Id.*] legal rights to privacy appeared 2000 years ago in Jewish laws. [FN24, *See* DIFFIA & LANDAU, *supra* note 21, at 126 (“[If one man builds a wall opposite his fellow's] windows, whether it is higher or lower than them ... it may not be within four cubits [If higher, it must be four cubits higher, for privacy's sake] (quoting HERBERT DANBY, THE MISHNAH 367 (Oxford University Press 1933)).] The Talmud explains that “a person's neighbor should not peer or look into his house.” [FN25, DIFFIA & LANDAU, *supra* note 21, at 126.]

*Id.*; See also, Mr. Pautler noting that, “Eavesdropping [FN43, Purportedly the practice of standing underneath the eaves of a building and listening to conversations occurring

the deciding factor in making a determination, on an issue, like that one before this court; whether a secretly recorded conversation, under duress, within the kitchen of a private residence, between two family members, who are alone, and another family member left the room so that they can be alone, about child molestation falls within the definition of private, under the Privacy Act.

Mr. Kipp argues the analysis should also consider the history and context of privacy in Washington, and suggests this starts with the drafting and creation of the Washington State Constitution. Article 1, section 7, specifically addresses privacy stating: "No Person Shall be Disturbed in his Private Affairs, or His Home Invaded, Without Authority of Law."<sup>2</sup>

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within. *See* Bast, *supra* note 18, at 891.] was a risky business, punished by the colonists through the application of English commonlaw. [FN44. DIFFIA & LANDAU, *supra* note 21, at 128.']; In addition, privacy was address in 1878 by the United States Supreme Court in, *Ex parte Jackson*, 96 U.S. 727, 733 (1878) holding that first class mail warranted protection and that the government could not open first-class mail without a search warrant. Prior to the admission of Washington privacy has been concern expressed and codified to preserve both their privacy in relations with other people and with their government.

<sup>2</sup> Interestingly of the states that have similar privacy language in their constitutions, half have all party consent statutes: "Only the constitutions of nine other states have a similar provision. [fn 74] Of this list, Washington, California, Florida, Illinois, and Montana also require the permission of all parties to a telephone conversation before it can be legally recorded. [fn 75]." James A. Pautler, NOTE: You Know More Than You Think: State v. Townsend, Imputed Knowledge, and Implied

While the state will undoubtedly argue the constitution is divorced from the statute, Mr. Kipp would respectfully disagree and suggest that indeed the statute, flows from the constitution and legislature's role in effecting the constitution and securing the privacy of individuals guaranteed under it. Associate Chief Justice Charles W. Johnson and Scott P. Beetham, authored, The Origin of Article 1, Section 7 of the Washington State Constitution, 31 Seattle Univ. L. R. 431 (2008). The article attempts to probe the thoughts and rationales of the drafters in creating this provision, which was unique at the time<sup>3</sup>. One of the conclusions drawn by Associate Chief Justice Charles W. Johnson and

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Consent Under the Washington Privacy Act, 28 Seattle Univ. L. R. 209, 214 (2004)(footnotes omitted).

Additionally, Mr. Paulter in his Note, published in 2004 found only 12 states out of the 50 having all party consent statutes. See 28 Seattle Univ. L. R. 201-211 [fn 18] and at 214 [fn 75].

<sup>3</sup> This Article will demonstrate that history does in fact provide guidance to the intention of the framers when they rejected the language of the Fourth Amendment and adopted the unique language of article I, section 7. Fn 10 The language was unique until 1910 when the Arizona State Constitutional Convention adopted article I, section 7 verbatim for its own declaration of rights. See ARIZ. CONST. art. II, § 8. Records from the Arizona Convention reveal only that the Committee on Preamble and Declaration of Rights examined Washington's Declaration of Rights and decided to recommend it to the Committee of the Whole with only minor alterations. Each provision was proposed to the Committee of the Whole individually, and the committee adopted article I, section 7 without debate. THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910, 658-59 (J. S. Goff ed. 1991).

31 Seattle Univ. L. R. at 432.

Scott P. Beetham specifically addressed that the elected officials would have to provide the law regarding private affairs, and the drafters expected they would be held accountable by the citizens for their privacy:

By entrusting both the courts and legislature to provide the "law" authorizing disturbances of residents' private affairs, the Rights Committee not only followed long-standing precedent, it also ensured that each branch of government would serve as a check on the other. Moreover, the Rights Committee drafted article I, section 7 in the middle of an era of fervent populism [fn 109] and the framers guaranteed that both the courts and legislature would remain directly accountable to the people by providing for the popular election of legislators [fn 110] and judges. [fn 111] **In this manner, the courts, legislature, and the people all serve to ensure residents' private affairs receive sufficient protection.**

31 Seattle Univ. L. R. at 448-450 (footnotes omitted)(emphasis added).

Associate Chief Justice Charles W. Johnson and Scott P. Beetham then went on to state:

"While the plain language of article I, section 7 "clearly recognizes an individual's right to privacy with no express limitations," [fn 196] the plain language of the provision also does not set forth constitutionally prescribed minimum standards such as the Fourth Amendment's reasonableness and probable cause requirements."

31 Seattle Univ. L. R. at 454 (footnotes omitted). The duty then to proscribe the law regarding privacy fell to both the courts and the legislature.

20 years after the adoption of its constitution, Washington's legislature acted to preserve privacy, as the relatively new technologies of telegrams and telephones became more at risk to privacy violations.

Washington enacted a privacy statute in 1909 [fn 78] (The statute provided the following: "Every person . . . who shall intercept, read or in any manner interrupt or delay the sending of a message over any telegraph or telephone line . . . shall be guilty of a misdemeanor." Rem. Comp. Stat. 1922, § 2656(18) (1909) (current version at WASH. REV. CODE § 9.73.030).

28 Seattle Univ. L. R. at 238<sup>4</sup> [footnote omitted].

The legislature did not stop there either and as new technology for electronic eavesdropping arose and began to become in common use they acted. See *State v. O'Neill*, 103 Wn.2d 853, 878-879, 700 P.2d 711, 1985 Wash. LEXIS 1132 (1985), which gives a short history of the Privacy Act stating:

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<sup>4</sup> Associate Chief Justice Charles W. Johnson and Scott P. Beetham also specifically noted the issues of modern communications and technological advancement facing the drafters stating:

When the seven men comprising the Rights Committee were charged with drafting a state declaration of rights in July of 1889, they were asked to do so in a time of rapid change, technologically, socially, politically, and legally. The broad language that the Rights Committee, framers, and ratifying public eventually chose for article I, section 7 was a clear response to these changes, particularly the rapid advances in technology and attempts by the government to compel witnesses to testify and produce documents for various governmental bodies as demonstrated by *Kilbourn*, *Boyd*, and *Pacific Railway Commission*.

31 Seattle Univ. L. R. at 465.

**The State of Washington attempted to curtail wiretapping before the federal statute was adopted.** In 1967, Washington enacted RCW 9.73.030-.080, making it unlawful for anyone not operating under a court order to intercept or divulge certain communications without the consent of all persons engaged in the **communications or conversations**. This law was characterized as an *all party* consent law. The law provides that a court ordered wiretap can be authorized when there are reasonable grounds to believe that national security or human life is endangered. RCW 9.73.040, As originally adopted, RCW 9.73 is one of the most restrictive electronic surveillance laws ever promulgated.

In 1970, the statute was amended to exclude certain police and fire department functions such as recording of incoming telephone calls. Laws of 1970, 1st Ex. Sess., ch. 48, § 1 (codified at RCW 9.73.090(1)). In, this court interpreted RCW 9.73.090(1) to except emergency telephone calls to police from the prohibition against the unconsented recording of private conversations only for the purpose of insuring the accuracy of their reception. This provision does not affect the application of RCW 9.73.050 under which nonconsensual recordings of private conversations are inadmissible as evidence.

In light of *Wanrow*, the Legislature again amended RCW 9.73. The original Senate proposals would have conformed the statute with the federal law and allowed recordings when one party consents. Senate Bill 2925, 45th Legislature (1977); Engrossed Senate Bill 2419, 45th Legislature (1977). **The House, however, refused to approve these Senate proposals because they were too broad an exception to the right of privacy. Hence, the statute was not conformed to federal law but rather a provision was adopted which retains the general restrictiveness underlying the statute yet gives law enforcement personnel some latitude by making it lawful to intercept oral communications when one party consents and the officer has obtained a court order. RCW 9.73.090(2). The court order must be based on probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony. RCW 9.73.090(2).**

The statute provides that it is *unlawful* for any individual to violate its provisions. RCW 9.73.030. The statute excludes all evidence acquired in violation of the statute or court order, RCW 9.73.050, and provides both a civil and criminal penalty. RCW 9.73.060 and .080.

Thus, the **Washington privacy act significantly expands the minimum standards of the federal statute and offers a greater degree of protection to Washington citizens.**

*id.* (Emphasis added)<sup>5</sup>.

The subsequent history of the Privacy Act included two more small changes in 1985 c 260 § 2, inserting language addressing a hostage holder or barricaded person, and 1986 c 38 § 1, adding language affecting reporting medical emergency, crime, and disasters. RCWA 9.73.030. Further, after 9/11, unlike the Federal government, with the passage of the Patriot Act, which granted broad additional powers to the federal government to invade privacy, Washington State passed nothing similar. See RCWA 9.73. et al. The Privacy Act remained unchanged.

Additionally, a right of privacy has been confirmed in Washington, along with significant other protections afforded to secure privacy. This was discussed at some length in *Cowles Pub. Co. v. State Patrol*, 109 Wn.2d 712, 720-721, 748 P.2d 597, 1988 Wash. LEXIS 1, 14 Media L.

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<sup>5</sup> Also, *Katz. v. United States*, 389 U.S. 347 (1967), which formed the basis of the federal electronic eavesdropping law came down at this time and it may well have been one of the impetuses for Washington's actions.

Rep. 2177 (1988), which analyzed the privacy issues within RCW 42.17.260(1) [also known as the Public Disclosure Act]. The Public Disclosure Act allows an agency to delete names and other identifying details from records released under the public disclosure act if such deletions are "required to prevent an unreasonable invasion of personal privacy". The public disclosure act like the privacy act does not contain a definition of what constitutes "personal privacy". The court analyzed whether the investigative reports about alleged misconduct by officers, where private, finding that they were not. In doing so, it did a wide ranging review of statutes providing some privacy protection and Washington tort law and the right of privacy, to determine the scope of privacy. The court's analysis on this issue is as follows:

Inasmuch as the statute contains no definition of the term, there is a presumption that the legislature intended the right of privacy to mean what it meant at common law. *New York Life Ins. Co. v. Jones*, 86 Wn.2d 44, 47, 541 P.2d 989 (1975). The most applicable privacy right [721] would appear to be that expressed in tort law. Tort liability for invasions of privacy by public disclosure of private facts is set forth in Restatement (Second) of Torts § 652D, at 383 (1977): "One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public." The comment to the Restatement illustrates what nature of facts are protected by this right to privacy.

The comment to the Restatement illustrates what nature of facts are protected by this right to privacy.

**Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.** Restatement, *supra* at 386.

*Cowles Pub. Co. v. State Patrol*, 109 Wn.2d at 720-721 (emphasis added).

Mr. Kipp specifically notes the restatements comments about private things such as family quarrels, and sexual relations, which are private matters, and which were included in the recording admitted against him. He would argue this is further evidence that such subjects discussed between family members are typically considered private.

The Cowles court went on to discuss additional ways that privacy has been protected in Washington, providing a survey of the broad amount of legislative acts, which include privacy protections as follows:

Rights of privacy are established in tort law. See Restatement (Second) of Torts §§ 652-652I (1977); *Mark [724] v. Seattle Times*, 96 Wn.2d 473, 635 P.2d 1081 (1981). A tort action should not and does not constitute the sole protection which government affords to the privacy interest of individuals. A threatened invasion of those interests may not have all of the characteristics necessary to warrant recovery of damages under existent tort principles

and yet be properly a subject of governmental sanction. Numerous statutes of this state provide examples of such intervention.

These include RCW 43.07.100 (information regarding personal affairs furnished to the Bureau of Statistics); RCW 26.26.050 (records of artificial insemination); RCW 71.05.390 (information regarding the mentally ill); RCW 7.68.140 (information regarding records of crime victims). Other statutes protecting confidentiality include RCW 10.29.030(3), RCW 15.65.510, RCW 18.20.120, RCW 18.46.090, RCW 18.72.265, RCW 19.16.245, RCW 24.03.435, RCW 24.06.480, RCW 42.17.310 (the public disclosure initiative lists 11 categories of exempt records, including those containing personal information regarding students, patients, clients, prisoners, probationers, parolees, and information regarding employees, appointees or elected officials, "to the extent that disclosure would violate their right to privacy"), RCW 43.21F.060, RCW 43.22.290, RCW 43.43.856, RCW 43.105.041, RCW 48.13.220, RCW 49.17.200, and RCW 78.52.260. *Rhinehart*, at 236-37.

*Cowles Pub. Co. v. State Patrol*, 109 Wn.2d at 723-724.

Again, the above shows how broad a range or scope of privacy the people of Washington have sought through their legislative process and have determined these areas deserve privacy protections in law. Justice Brandies in his dissent in *Olmstead v. United States*, 277 U.S. 438, 478, 48 S. Ct. 564, 72 L. Ed. 944 (1928) is often quoted to express how fundamental privacy is "[T]he right to be let alone [is] the most comprehensive of rights and the right most valued by civilized men." [Cited approvingly by the Washington Supreme in *Rhinehart v. Seattle*

*Times Co.*, 98 Wn.2d 226, 240, 242, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)].

The legislative title for the Privacy Act is “Violating the Right of Privacy”. See RCWA 9.73, et al. This is yet another reference that privacy is a right, which the legislative branch is protecting, and is implementing the State’s constitution protections on privacy.

Associate Chief Justice Charles W. Johnson and Scott P. Beetham argue that the broad language of article I, section 7 specifically allows the citizens of Washington to play an active role in determining the scope of their right of privacy now. The scope of the right was not set in concrete in 1889 stating:

Looking back at the available historical evidence to determine the original intent of the framers, it is clear that they drafted a provision that can stand the test of time. The broad language in article I, section 7 will always require that official interferences with the private affairs of residents are governed by precise and predetermined legal principles. **But by allowing for disturbances made with the authority of law, the framers also allowed future generations to play a role in shaping their privacy rights, provided the relevant constitutional limitations are respected.** Consequently, it is not hard to imagine the framers looking at Washington's present residents, legislators, judges, and justices and asking them what value they place on privacy today.

31 Seattle Univ. L. R. at 465.

Mr. Kipp argues that the historical record indicates that the citizen's of Washington have been leaders in preserving their privacy as opposed to many other jurisdictions including the federal government. That protecting our privacy has been an issue, from the foundation of the state: Further, that the people through their legislators have repeatedly, over the decades resisted the urge to narrow the privacy act, from an all-party-consent statute, to a one-party-consent statute defying trends in other states or by the federal government.

Also, that despite continued advances in technology both the courts and the legislature have continued to resist the urge to downgrade privacy. In *State v. Faford*, 128 Wn. 2d 476, 488, 910 P.2d 447, 452 (1996), the eavesdropping of a neighbor on wireless telephone conversations was held to be in violation of the Washington Privacy Act. The court stated:

We recognize as technology races ahead with ever increasing speed, our subjective expectations of privacy may be unconsciously altered. Our right to privacy may be eroded without our awareness, much less our consent. **We believe our legal right to privacy should reflect thoughtful and purposeful choices** rather than simply mirror the current state of the commercial technology industry. *Id.* at 485, 910 P.2d at 451 (quoting *State v. Young*, 123 Wash. 2d 173, 186, 867 P.2d 593, 598 (1994) (holding that police use of a thermal imaging device to perform warrantless search of a defendant's residence violated Washington Constitution)).

*Id.* (Emphasis added).

The thoughtful and purposeful choice in this case before this court was aptly summarized by Judge Van Deren in her dissent stating: “If a conversation between two family members—after clearing the room in a private residence in order to speak alone—about an incriminating matter does not fall within the act's scope, I fail to see how our highly-restrictive privacy act provides any meaningful protection to the privacy rights of Washington's citizens.” *State v. Kipp*, 171 Wn. App. 14, 36, 286 P.3d 68, 2012 Wash. App. LEXIS 2364, 2012 WL 4510787 (2012).

Judge Van Deren dissent raised two broad areas where the appeals court was changing and limiting privacy in Washington stating:

“[M]ajority's conclusion creates a per se rule that “a confession of child molestation” or any other crime is not subject to a reasonable expectation of privacy. . .” *Id at 39*.

She then went on “[G]eneralization that kitchens are “commonarea[s]” with increased potential for the presence of third parties. Majority at 27. Because this generalization resembles a per se rule contrary to the required case-by-case analysis of privacy act claims and is divorced from the specific facts of this case, I disagree. *Id at 41*.

Mr. Kipp argues the rule advocated by the appeals court would in effect gut the privacy act, making it without effect, should a person utter something that the state can claim is an admission to a crime, or if the

other party decides to secretly record and releases same, and so in the circular reasoning of the appeals court the conversation was never intended to be private, the long history of privacy act, and our consistent state historical record argues against such a conclusion.

2). THE LACK VOLUNTARINESS OF MR. KIPP RECORDED STATEMENT, WHICH HE ALLEGED WAS UNDER DURESS, SUPPORTS HIS CLAIM THAT HIS RECORDED CONVERSATION WAS PRIVATE.

The court explicitly stated it accepted Mr. Kipp's offer of proof. RP at 63. Mr. Kipp. Mr. Kipp had explicitly proffered in his motion that Mr. Tan was armed, that Mr. Tan had murdered his wife, (found not guilty by reason of insanity) and that Mr. Kipp was in fear of Mr. Tan. CP 38; RP 57 another proffer to explain his reaction and statements to the court; See also Mr. Kipp's trial testimony at RP 313-333, which detail his fear for both himself and his two young children present downstairs in the house. That V lance Tan, Joseph Tan's son was left the kitchen, but told Mr. Kipp, "that his dad wanted to talk to me, and that he [V lance] had told his dad to leave my family alone and not to hurt me." RP at 323.

Mr. Kipp clearly made a claim to the trial court that the statement recorded on the tape, was made under duress and that this went to the

“nature of the conversation”.<sup>6</sup> Mr. Kipp argues that assuming that the nature of the conversation is a valid way to analyze privacy, then that includes whether the nature of the conversation included that he was under duress because that would go to the lack of voluntariness of the disclosure.

*State v. Goucher*, 124 Wn.2d 778, 784, 881 P.2d 210, 1994 Wash.

LEXIS 565 (1994) the court noted that voluntariness of a disclosure can effect whether the information disclosed is considered private.

In *Young*, this court explained that **"what is voluntarily exposed to the general public" is not considered part of a person's private affairs.** *Young*, at 182. In this case, the Defendant voluntarily exposed his desire to buy drugs to someone he did not know. While he states that "[i]n today's world, the telephone is the primary means for personal communication with friends, loved ones, and business relations", he neglects to observe that his conversation was with an acknowledged stranger. See Br. of Appellant, at 14. The State's contention that the Defendant waived his claim of privacy by dealing with a stranger thus has merit. A privacy interest must be reasonable to warrant protection even under article 1, section 7. As one commentator has stated, "a 'private affairs' interest may be defined as a matter or object personal to an individual such that intruding upon it would offend a reasonable person." James W. Talbot, Comment, *Rethinking Civil Liberties Under the*

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<sup>6</sup> Mr. Kipp argued at some length in his Brief of Appellant at 20-26 that the trial court had misstated the test in *Lewis v Dept of Licensing*, 157 Wn.2d 446, 459, 139 P.3d 1078 (2006), from “duration and subject matter”, to nature and duration [RP at 64]. Mr. Kipp argued this error was a cause the trial court to the incorrect conclusion as the lack of application of the privacy act. Further, Mr. Kipp argued the court despite opposing proffers, concerning the “nature of the conversation”, rejected his characterization that he was under duress. See Brief of Appellant at 20-26

*Washington State Constitution*, 66 Wash. L. Rev. 1099,  
1113 (1991).

*State v. Goucher*, at 784(emphasis added).

While *Goucher supra*, is an article I, section 7 case, it also included a substantial discussion of the privacy act, as the defendant argued, “[T]hat police participation in this conversation unreasonably intruded upon his private affairs, the Defendant relies on several cases dealing with Washington’s privacy act, RCW 9.73.” *Id.* at 785-86. Mr. Kipp argues that the corollary to the proposition that what you **voluntarily exposed** to the public is not private; is that an **un-voluntary disclosure** would still maintain the intention of privacy as it was forced. *See Goucher*, at 784.

#### F. CONCLUSION

Mr. Kipp requests that the Supreme Court suppress the surreptitious tape recording and remand the case for a new trial without the recording and without any other evidence obtained at the same time of the recording.

Respectfully submitted,



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WSBA#28861

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on May 2, 2013, I arranged for service of the foregoing Supplemental Brief of Appellant, to the court and to the parties to this action as follows:

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**DATED** at Bainbridge Island, Washington this 2 day of May, 2013

  
Amanda Leone  
**OLSEN & McFADDEN, INC., P.S.**

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Dear Clerk,

Attached for filing in .pdf format is Supplemental Brief of Appellant Cause No. 88083-2. The Declaration of Service is attached to the end of the brief.

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