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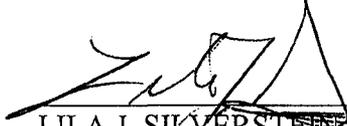
STATE OF WASHINGTON,)	No. 88694-6
Respondent,)	
)	STATEMENT
v.)	OF ADDITIONAL
)	AUTHORITIES
ERISTUS JORDAN J.,)	(RAP 10.8)
Juvenile Petitioner.)	

Pursuant to RAP 10.8 and RAP 13.4(b)(4), petitioner Eristus Jordan J. submits the following statement of additional authorities in support of the petition for review in the above-captioned matter:

Dominic Holden, *Hostile Policing*, The Stranger, August 7, 2013 (article describing threats police levied at reporter for photographing them and refusing to leave area, and stating "I'll bet this sort of harassment happens every day," but most incidents get no attention because the targets "are often people of color and the homeless").

DATED this 12th day of August, 2013.

Respectfully submitted,


LILA J. SILVERSTEIN (38394)
Attorney for Petitioner

Statement of Additional Authorities

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 ORIGINAL

August 7, 2013

NEWS

Hostile Policing

After Cops Threatened to Arrest Me and Harass Me When I Took Their Picture, I Decided to Test the Citizen Complaint Process to See if It Works

by DOMINIC HOLDEN

I was riding my bike past Fifth Avenue South and South Jackson Street at about 7:25 p.m. on July 30 when I saw several officers surrounding a young black man sitting on a planter box. The cops were speaking loudly at him. As a reporter, when I see a buzz of police activity, I almost always stop to see what's going on. As the officers barked louder at the man, I took out my phone and snapped a photo.

From 25 or so feet away, I couldn't discern what was happening, but the man stood up to leave. That's when one of the officers eyed me and yelled something like "He's got a camera!"

King County Sheriff's Office sergeant Patrick "K.C." Saulet rushed over and told me to leave or I'd be arrested. He claimed I was standing on transit station property, that the International District Station plaza belongs to King County Metro and I could not stand there. I backed up until I was unambiguously on the City of Seattle's sidewalk, near the curb. But Sergeant Saulet insisted that I would be arrested unless I left the entire block. He pointed east and told me to cross the street.

Now, let me pause for a second to say this: When the US Department of Justice alleged that the Seattle Police Department was routinely using excessive force, federal prosecutors stressed in their 2011 report that officers were escalating ordinary interactions into volatile, sometimes violent, situations. That was followed last summer by a county audit upbraiding the King County Sheriff's Office for mismanaging misconduct cases and not taking complaints seriously. Now a federal court controls the SPD under a reform plan, and the county's new sheriff is under unprecedented pressure to discipline his deputies, so the two agencies should be showing more civility on the beat. Or so you'd think.

Back to Sergeant Saulet: "You need to leave or you're coming with me," he said, again pointing to the block eastward and threatening to arrest me.

Commuters, shoppers, and vagrants were milling about the sidewalk and plaza—some people were passing closer to the center of the police activity than I was—but I was the only person on

that busy block told to leave (and the only person watching the police and taking their picture). I hadn't tried speaking to the officers, except to reply, I hadn't been interfering with them in any way, and I had been standing on public property the entire time. The officers did not accuse me of any offense other than standing there. And at this point, the man I'd initially seen the police questioning was long gone.

Before I left the block, I asked for Saulet's name—I didn't know who he was until that point—and he pointed to his embroidered shirt breast. As I took a photo of it, he lifted his left hand, apparently in an attempt to block the shot, while his right hand rested by his pistol.

What I didn't know at the time is that Sergeant Saulet has a long history of abusive policing. In 2006, the *Seattle Post-Intelligencer* reported that he had 12 sustained complaints against him and "one of the worst misconduct histories in the King County Sheriff's Office." Two years later, *The Stranger* reported that Saulet had been reprimanded five times for excessive use of force and four times for improper personal conduct. Nonetheless, Saulet has kept his job and his rank as sergeant.

After snapping Saulet's picture, I rode my bike across the street because I didn't want to get arrested, even though standing on the sidewalk and taking photos of police from a reasonable distance, as far I know, is legal. I was jotting down a few notes so I'd remember what happened, when I saw three officers leaving the scene. Who at the scene was the commanding officer? I asked. They explained that, because they were Seattle cops, they didn't know which county officer was in charge.

Then Seattle police officer John Marion asked why I was asking.

I'd just been threatened with arrest for standing on the sidewalk, I told him (even though he was standing close by when it happened), so I wanted to know who was in charge and whether Marion thought it was illegal for me to stand on the sidewalk.

Instead of answering, Officer Marion asked why I was asking questions.

I explained that I'm a reporter. He asked which news outlet I worked for, and I told him.

Officer Marion shot back: "I'm going to come into *The Stranger* and bother you while you're at work." He asked for my business card, apparently so he could get the address to come to my office (I didn't give it to him), and, at least once more, he threatened to come harass me at work. His point, he said, was that I was "harassing" him at his work.

In other words, when I asked matter-of-fact questions in a normal tone, this cop threatened to "bother" me at my job. If that's not escalating a situation, I'm not sure what is.

Before I rode off on my bike, I also took Officer Marion's photo. That's him on this page, giving the *Come at me, bro* gesture.

Taking photos of officers and standing on public property—if you're staying out of their way, like I was—is legal. That was the word from King County Sheriff's Department spokeswoman Sergeant Cindi West when I spoke to her two hours later. Although she couldn't comment on my specific incident, she explained, "It's a free country, and as long as you have a legal right to be there, you can take a picture." She elaborated in an e-mail: "In general, a person cannot be ordered to stop photographing or to leave property if they have a legal right to be there. Additionally, if a group of people are in an area legally we could not order just one person to leave."

Speaking on behalf of the Seattle Police Department, Sergeant Sean Whitcomb commented on the officer who threatened to harass me at my office. "It is our job—*it is our job*—to politely answer reasonable questions from members of the public when it is safe to do so," he said. He also confirmed that questions regarding the on-scene commanding officer and the legality of standing on the sidewalk are reasonable.

"The public does not expect us to threaten them with a workplace visit for the sole purpose of bothering them," Whitcomb added.

Let me be the first say it: This is not a big case. Seattle police have punched, kicked, and killed people in recent years. What happened to me was comparatively minor. I have no injuries. But I'm writing about it—and filing complaints against the officers—*because* it's minor. Officers went out of their way to threaten a civilian with arrest and workplace harassment for essentially no reason. Because they could. Because they didn't like being watched.

I'll bet this sort of harassment happens every day. I would guess that cops treat normal, law-abiding people like garbage all the time—and it works. Most people don't complain; they get intimidated. They get bullied, they back down, and the cops never face any scrutiny. Because I am in the unusual position of being a reporter, I am more familiar with police procedure than most people. I must also acknowledge that these are my allegations, nothing has been proven yet, and the officers involved have not been charged with anything or found guilty in this investigation. However, as a reporter, it's still my job to observe and report on cops.

"We've found that many officers stymie individuals' constitutionally protected right to observe the police," says David Perez, an attorney for Perkins Coie, an international legal firm based in Seattle, who says my experience is "disheartening, but not surprising."

In my case, it appears I was singled out of the crowd for taking photos, stopped without cause, and threatened with arrest for the singular purpose of suppressing my constitutional right to act as a free agent of the press.

If the officers had gone about their business, I would have assumed they had an unremarkable interest in talking to the man and left the scene. But instead, Saulet and other officers chased away an onlooker and acted as if doing so was standard procedure—very possibly representing the way King County Sheriff's deputies seek out conflicts with citizens all the time. The Seattle cop escalated an ordinary situation, too, with his threats to "bother" me at work.

As the Justice Department pointed out in its 2011 report on SPD's practices: "In a number of incidents, failure to use tactics designed to de-escalate a situation led to increased and unnecessary force."

This ongoing pattern led to the SPD's federal court settlement, yet still, some cops haven't gotten the message. They are part of a stubborn, toxic culture of disrespect and intimidation, and until that culture is exposed and discarded—and until bad apples are fired or retired—the local police forces will be reviled by people who should appreciate and trust them. Minor incidents like this shouldn't be happening in the first place, so I'm making an issue out of it. And some minor incidents turn into major incidents.

"Not only that," Perez explains, "we've also found that officers sometimes go even further with those who refuse to back down. In particular, the 'obstruction' statute is used to arrest individuals that refuse to leave the scene of a crime, or refuse to stop filming or photographing officers—even though they're trained not to arrest folks for these reasons. That's probably what would have happened to you had you stayed there."

He says using the law this way "not only chills free speech," it undermines the right to observe police, which is crucial to police accountability.

I decided to file complaints with both the city and county and provide recorded affidavits. It shouldn't be considered professional conduct for police to threaten law-abiding citizens with arrest. That's intimidation. And it also shouldn't be considered professional conduct for city police to respond to a simple question from a civilian—am I breaking the law?—with the threat of harassing that civilian in his place of work. If either of those things are considered acceptable, we should change the code of police conduct, because both are insane. And if they aren't considered acceptable, I expect the departments to punish the cops involved.

Two days after my incident, Chief Jim Pugel announced in an e-mail to his roughly 1,300 sworn officers that the department had initiated an investigation (solely based on my questions). He said

that my allegations, if true, clash with the department's training on a program called Listen and Explain with Empathy and Dignity. (About half the city's officers have attended this training.) Pugel added, "I am aware of the article by Mr. Holden in the *Stranger* Slog documenting the allegation of rudeness by one of my police officers."

Pugel is a solid chief, but he missed a key point: I'm not alleging that a Seattle police officer was rude to me. Rudeness would be a cop telling me to fuck off. Rudeness would be mocking my nasally voice. Rudeness would be saying my mama is so dumb she stared at a box of juice because it said "Concentrate."

I'm alleging something less funny. I'm alleging that Officer John Marion escalated a normal interaction into a menacing one by asking where I worked, requesting a business card, and then, with what I believe was malicious intent, threatening to come "bother" me at my office. That's harassment. That's an attempt at intimidation.

But it's not clear that Officer Marion's behavior qualifies as anything more than rudeness under SPD's policies.

Sergeant Krista Bair, the investigator handling my intake, said my complaint would likely be governed by section 5.001 in the SPD's Policy and Procedures Manual, which concerns standards and duties. As she pointed out, "You can't write for every scene possible on the street."

This already raises questions about the complaint system: Does the city need a specific policy tailored to every offense in order for SPD to acknowledge that what an officer did was wrong? Is the complaint program rigged to only recognize certain problems such that it protects cops and diminishes complaints?

Pierce Murphy runs the division in charge of internal police investigations, called the Office of Professional Accountability (OPA). He acknowledged that my complaint was about Officer Marion threatening "to harass you at your place of work, not that he was being a jerk." But the question for him isn't whether the offense would be a violation of Washington State law or the city's criminal code; it's whether Marion violated something specific in SPD's own policy and procedure manual. And Murphy isn't certain a relevant policy exists. After only two months on the job, Murphy told me, "I don't claim to know the SPD policy manual in and out yet." I asked him what happens if a complaint doesn't fall neatly into a category for which there's a penalty, a question that Murphy described as "a hypothetical."

It's up to Murphy what—if any—charge is brought against Officer Marion. He's not sure how this process will play out and admitted, "I don't know if at this point the OPA is at the efficacy level

that you would want or I would want. We'll see how well it works on this one. I kind of feel like I've got nothing to hide and everything to gain from you shedding your journalistic light on it."

Sergeant Bair suggested that instead of pursuing my complaint, I could opt for mediation with Officer Marion (assuming we were found eligible and both of us agreed to do it). Mediation would mean a third party would sit us down, let us hash out what happened, and help us understand each other's point of view. But mediation comes with a catch. "There is no discipline for the officer," Bair said. In other words, this form of restorative justice is a get-out-of-jail-free card for the cop. If you agree to mediation, the most that will happen is you and the cop will sit down and have a little chat. While some people may find that cathartic, it seems backward to agree on facts in mediation—including facts that may prove an officer violated your rights—only to render all of those facts impotent by forgoing any further right to exact justice in your case.

Why would anyone do that?

And what happens if you decline mediation and pursue the complaint process? Few complaints filed with the OPA actually result in a penalty for the officer. The police department handled complaints against 243 employees last year, and of those, only 12 percent resulted in a sustained complaint and discipline (the rate the year before was identical). About 20 percent of cases resulted in more training for the officers. The rest—67 percent of the cases—were dismissed as unfounded, because the cops' behavior was "lawful and proper," or it was inconclusive based on the evidence.

Reaching a verdict on a complaint can take up to 180 days. It begins with an investigator, in my case Sergeant Bair, assembling the facts. For instance, she recorded an interview with me, asking questions like: Did you think Officer Marion would actually come harass you at work? (If he's irrational enough to escalate a normal conversation into an inquisition about my place of work and threatening to stalk me there, I wouldn't put it past him, I told her.) Bair also acquired dash-cam footage from a nearby squad car. (It reportedly showed part of Officer Marion, none of me, and didn't have audio.)

Next, Murphy (the OPA director) and a former judge named Anne Levinson (the independent OPA auditor) will consider the facts, and Murphy will decide whether the case should be handled as an administrative review by the officer's command staff or be handled by internal investigators. If it's handled by the investigators, the officer will provide his testimony while more information is collected—such as interviewing other cops at the scene—and eventually Murphy will recommend punishment. The chief ultimately metes out a sentence, which rarely results in more than a brief suspension.

It's a process arduous enough to make that gutless mediation seem worthwhile. And frankly, it's enough to discourage anyone with a full-time job or family from committing to a complaint at all.

While that byzantine process can take ages, less than three hours after I complained on Slog that it was wrong to characterize the officer's menacing comments simply as "rudeness," Mayor Mike McGinn issued his own strongly worded statement.

"Generally speaking, threatening and intimidating behavior, including threats of harassment, are not professional or courteous and are unacceptable in our police department," wrote the mayor, who added he could not comment on this case specifically, because it's an active investigation. "I will be following this matter closely to determine whether the department has taken to heart the changes the public wants to see."

I appreciate the mayor taking a stance on this. As the city's commander in chief, who has made mistakes with a troubled police force (to be fair, a police force that had troubles long before he arrived), McGinn is sending a critical message to our cops. Still, I wish more complaints about misconduct got this much attention—most get none—because I'll bet some police officers talk to civilians in Seattle this way routinely, and I'll bet those are often people of color and the homeless. When that happens, the chief doesn't issue a statement, the mayor says nothing, and it passes without a peep in the press.

In the week after my incident, the story was reported widely on social media and traditional news outlets. The Seattle Police Department has been heaped with scorn (especially on Facebook and Twitter). But my most serious complaint concerns the county officer who threatened to arrest me after taking photos in public, and then threatened to arrest me if I didn't stand where he said to stand. I argued in a complaint filed last Friday with the King County Sheriff's Office (KCSO) that Sergeant Saulet stopped me without cause, in what I believe was an illegal stop, with the singular intent of suppressing my constitutional right to observe activities in public.

As I mentioned, Saulet has been the subject of extensive internal discipline, as documented meticulously by *Seattle Times* reporter Lewis Kamb (who formerly worked for the *Seattle P-I*). On Twitter last week, Kamb linked to a trove of documents from his past reporting on Saulet's dozen sustained complaints, including one for "slamming [a man] against the trunk lid of his car and striking him in the genitals with an open hand so it caused... pain," according to a 1998 memo. In another memo, Major Richard Krogh told former sheriff Dave Reichert in 2001, "It is remarkable that someone would receive this number of complaints concerning courtesy issues." That comment was about another complaint that Saulet verbally harassed two motorists—a complaint that was sustained.

Given his history, Krogh told Reichert, "I recommend that Sergeant Saulet's employment with the King County Sheriff's Office be terminated."

Reichert had plenty of reason to be concerned. Former sheriff Sue Rahr—a major in the department back in 2000—wrote to commanders at the time about another case involving Saulet, saying, "He clearly has a problem; this is not an isolated incident."

But instead of firing him, Reichert commuted Saulet's penalty from termination to a mere four-day suspension. Reichert is now a Republican congressman, and Saulet remains a sergeant.

The county's failure to manage misconduct cases was the focus of an internal audit last July, which delivered a blistering takedown of discipline procedures: "For example, KCSO supervisors and the chain of command have not consistently enforced the policies and procedures to ensure officer accountability," the audit found. It added, among more than a dozen other criticisms, that "senior KCSO leadership openly downplays the importance of the discipline process," and that the final rulings on officers "lacked sufficient documentation of the rationale" to reprimand or exonerate an officer. Another problem: The investigations unit wasn't adequately staffed.

In that vein, the officer handling my case in the Internal Investigations Unit, Sergeant Michael Mullinax, also warned me they were short on staff. Mullinax needs to fill in on patrol many days instead of conducting investigations, he said; don't expect to reach him at his desk before 3 p.m.

Sergeant Mullinax may have the name of a Marvel Comics hero, but he has the soothing appearance of a fourth-grade math teacher. Wearing a practical Swiss watch and a blue button-up shirt, he sat me down at one end of a conference room table on the bottom floor of the King County Courthouse to take audio testimony of my complaint.

"I will be looking for video," he said, noting that several officers were present, but "we don't have civilian witnesses out there." In some ways, the county process is similar to the city's—it also can take up to six months—and begins with lots of questions. Mullinax presented me with Google Earth printouts of the intersection where the incident occurred, and I drew dots on them representing where the officers and I stood.

He explained that this is how my complaint will be processed: After Mullinax has interviewed me, talked to Sergeant Saulet and other officers, and gathered evidence, he will hand off the case file to his captain. The captain will then hand the file to Saulet's commander, the head of Metro security, Major Dave Jutilla, who will "review the file and write up the finding and recommendation." At Jutilla's discretion, the department will recommend discipline (or no discipline). If Saulet does face reprimand, he will enter into what's called a loudermill, a hearing

afforded to government employees facing punishment, in which the officer can appeal to the sheriff against disciplinary action.

The officers can also attempt to rebut my claims in this hearing, although I won't be present and I won't be told what they say about me. I'm naturally suspicious, because this presents the opportunity for officers to raise false allegations against me that I can't respond to. (My only recourse would be to appeal the decision.)

It was after one of these loudermill hearings that former sheriff Reichert granted clemency to Sergeant Saulet more than a decade ago.

But now that John Urquhart has been elected sheriff he will make the final decision. "The sheriff can take the recommendation and findings from Major Jutilla and he can lessen it or add to it," Mullinax explained as we wrapped up our meeting.

If I'm not happy with the result, "You can always file a civil lawsuit." (Several lawyers have already offered to help if I choose to go to court.)

According to an annual report by the county sheriff's office issued in April, only one-fifth of the complaint cases last year were sustained against King County officers—which isn't inherently problematic in itself, but it makes you wonder if civil lawsuits are more effective. The majority of allegations resulted in officers exonerated, while some claims were simply not upheld, and others expired after the 180-day window ran out. Of the 20 percent of instances where officers were punished, only 7 cops were terminated and 14 were suspended, while 45 officers only faced an oral warning, written reprimand, or some correction plan. That is to say, even in cases where there was a penalty, in more than two-thirds of the cases, it was a slap on the wrist.

Rates in 2011 were similar: 22 percent of complaints were sustained. However, in that year, three-quarters of the remedial actions were trivial and only one-quarter were suspension or firing.

Will this case be different for Saulet?

Detective Jason Stanley, called me Monday morning to say that when Saulet came in to work Sunday morning, "Sheriff Urquhart placed him on administrative leave." Due to my complaints and the history of misconduct, Detective Stanley says the department is taking extraordinary steps during the Saulet investigation so they can "get to the bottom of it." Saulet is getting paid to stay at home, perhaps for the duration of the investigation, and, for now at least, he's only on call for desk work.

"This is unusual," Detective Stanley added, "We're trying to do the responsible thing."

All the top brass seems to be saying and doing the right things—so far. But we'll see if this makes any difference. Stay tuned. ★



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MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: August 12, 2013

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State v. E.J.

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Statement of Additional Authorities

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