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JUL 05, 2016

Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 33427-9-III

STATE OF WASHINGTON, Respondent,

v.

JUSTIN DEAN VANHOLLEBEKE, Appellant.

APPELLANT'S REPLY BRIEF

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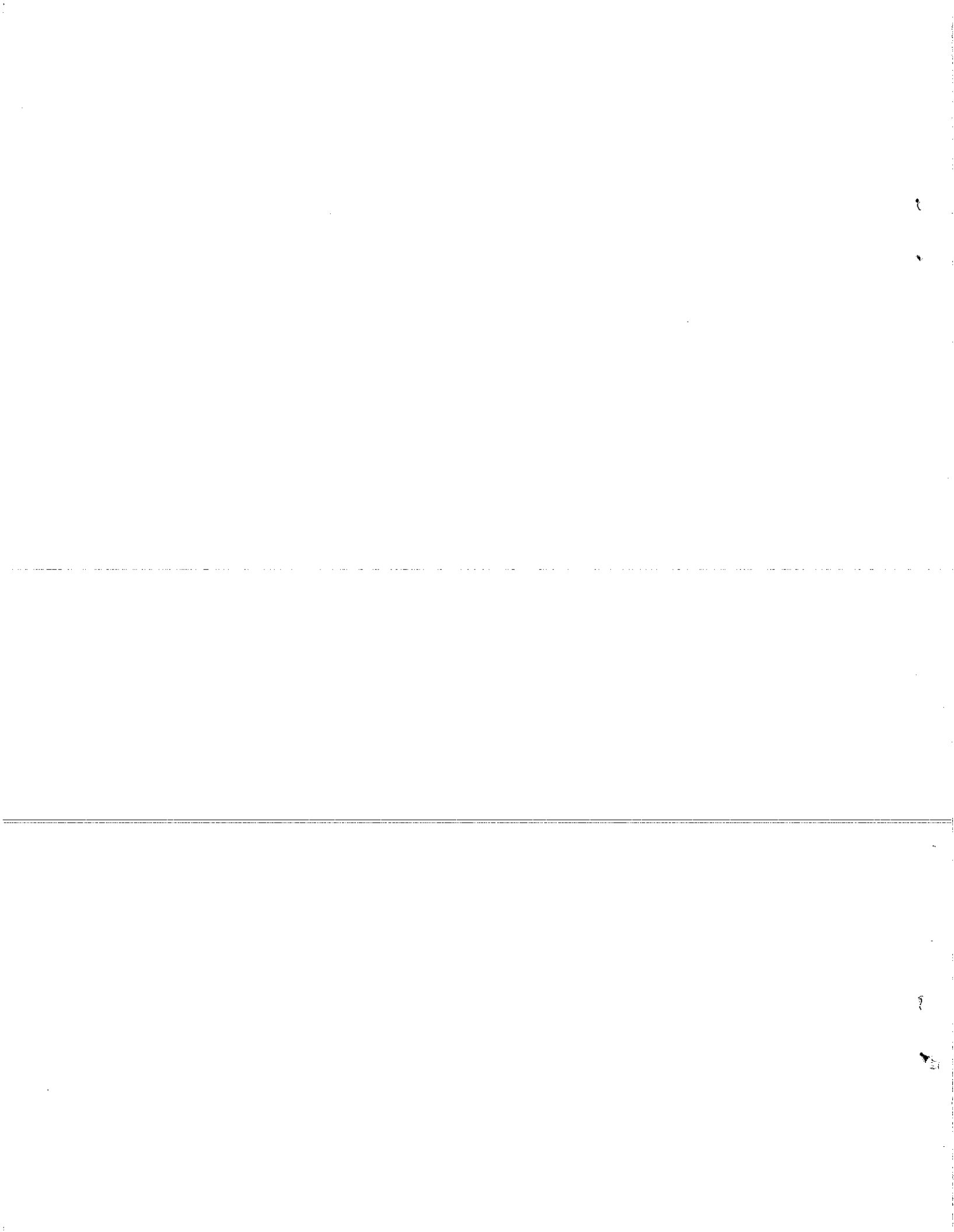


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I. ARGUMENT

A. The State fails to present any legal authority or argument justifying the warrantless search of the vehicle Vanhollebeke was driving over his express refusal.

The State relies upon *State v. Cantrell*, 124 Wn.2d 183, 875 P.2d 1208 (1994) for its entire argument in support of the warrantless search. In so doing, the State fails to acknowledge two critical differences between *Cantrell* and the present case, namely, (1) Vanhollebeke was the driver and sole occupant of the vehicle at the time of the stop, while *Cantrell* was driving a car owned by the passenger who gave consent; and (2) Vanhollebeke expressly refused consent to search, while *Cantrell* was never asked. These distinctions are why *Cantrell* does not simply dispose of the case.

Moreover, the State makes no effort to claim that Vanhollebeke did not have a legitimate privacy interest in the vehicle that he borrowed and drove. As such, the State misjudges the significance of Vanhollebeke's refusal. In the context of real property, the *Cantrell* rule is equivalent to the rule that consent of one person with common authority over property is valid against an absent, non-consenting co-tenant, as announced in *U.S. v. Matlock*, 415 U.S. 164, 170, 94 S. Ct. 988, 39 L.Ed.2d 242 (1974). But a different rule arises when the co-occupant is present and expressly objects, requiring police to obtain a warrant to enter

and search. *Georgia v. Randolph*, 547 U.S. 103, 120, 126 S. Ct. 1515, 164 L.Ed.2d 208 (2006).

As such, the issue presented under the facts of this case is whether the *Randolph* rule applies to personal property as well as real property. It is not, as the State apparently misapprehends, a *Cantrell* case. As such, the State has offered no argument or analysis on the cornerstone issue.

This court should hold that *Randolph* applies equally to personal as well as to real property. Applying that rule in this case, by failing to obtain a warrant and entering the vehicle to search it over Vanhollebeke's express consent, police violated the Fourth Amendment and article 1, section 7 of the Washington Constitution. The consequence for the violation is suppression of the unlawfully obtained evidence. *State v. Afana*, 169 Wn.2d 169, 180, 233 P.3d 879 (2010).

B. The State's reliance upon RCW 9.94A.530(2) to argue that Vanhollebeke's silence when the State alleged intervening convictions constitutes an acknowledgment of the convictions is misplaced, because that portion of the statute has been ruled unconstitutional.

State v. Hunley, 175 Wn.2d 901, 917, 287 P.3d 584 (2012) held that RCW 9.94A.530(2)'s provision that failure to object to a prosecutor's criminal history summary is an acknowledgment is unconstitutional on its face. The State relies solely upon that provision and its own bare

assertions to support the offender score calculation. But the State's bare assertions are insufficient to meet its evidentiary burden to prove the prior convictions. *Id.* at 910. Where the State fails to meet its burden, the minimum requirements of due process are not satisfied. *Id.* at 912 (*citing State v. Ford*, 137 Wn.2d 472, 481, 973 P.2d 452 (1999)).

II. CONCLUSION

For the reasons set forth herein and in the Appellant's Brief previously filed, the court should reverse Vanhollebeke's conviction and sentence and remand the case for further proceedings.

RESPECTFULLY SUBMITTED this 5th day of July, 2016.



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DECLARATION OF SERVICE

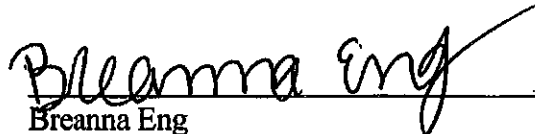
I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 5th day of July, 2016 in Walla Walla, Washington.


Breanna Eng