FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

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This11th motion replaces all previous motions to file amended petition.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PETER CARLIN, Respondent, vs. MARY EZENWA, Petitioner.	Court of Appeals Case No. 37496-3 Supreme Court Case No. 99707-1 **ELEVENTH MOTION FOR LEAVE TO FILE AN AMENDED PETITION FOR REVIEW**

I. IDENTITY OF ANSWERING PARTY

Petitioner **MARY EZENWA** proceeding *Pro se* requests the relief stated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 18.8(b), and to prevent gross miscarriage of justice, Ms. Ezenwa respectfully requests for review raising one additional issue and argument not included in the original, timely-filed petition for review. Ms. Ezenwa is filing the amended petition for review contemporaneously with this motion. She seeks an extension of time until today's date, to file the amended motion.

Wherefore, the Supreme Court of the State of Washington should not consider any of Ms. Ezenwa's past filings with this Court.

III. FACTS RELEVANT TO MOTION AND GROUNDS FOR RELIEF

1. By Unpublished opinion entered March 4, 2021, the Court of Appeals, Division Three, issued a decision affirming the trial court's order of protection entered against Mary Ezenwa.

2. A petition for review was timely filed on April 2, 2021.

3. On April 27, 2021, the Court of Appeals Division III, issued a decision on Appellant's Motion For Reconsideration of the order entered in March 4, 2021, and it ordered the Motion to be denied.

4. First, Ms. Ezenwa raises the issue about the proper analytical framework for determining whether the court correctly applied a VAPO pursuant to RCW 74.34.

5. Based on the record, the Court of Appeals opinion erred by supporting trial court's finding and ruling on the grounds that overwhelming evidence supported Alan Carlin was a vulnerable adult. (Appeals Opinion at 20).

6. Ms. Ezenwa contends that if viewed in the light of Petitioner Peter Carlin's burden of proof for a VAPO petition, the record does not support the trial court's finding, as evidenced by (a) Respondent's omission of Alan's most recent medical records from his current Primary Care Providers, and (b) statement from Gary Stenzel about subpoenaning Dr. Debra Brown which indicates there is conflicting evidence not addressed by

the trial court. Court of Appeals, Division III Opinion 22-25; RP at 7 line 14-19; RP 26-33; CP 10, 19, 21. In holding otherwise, the Court of Appeals erred, created a conflict with RCW 74.34, and established precedent likely to lead to erroneous resolution of RCW 74.34, to enforce a VAPO in Washington.

7. Ms. Ezenwa argues that a significant question of law under the Constitution of the State of Washington is involved because the Court of Appeals erroneously applied the law in affirming the VAPO issued by the trial court.

8. Ms. Ezenwa seeks a denovo review of her case because it raises an issue based on some errors in legal conclusion.

9. Here, the Court reviews questions of law de novo. Id. (citing Sunnyside Valley Irrigation). *Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003)).

10. Second in the "Statement of the Case," Petitioner raises the additional argument of the police misconduct matter.

11. Here, the Court of Appeals' decision is in conflict with Fourth Amendment.

12. A dishonest Cheney police officer evaded Fourth Amendment protections through obtaining cell phone location data from third party without a warrant and no consent from Alan Carlin and Ms. Ezenwa, and

used third-party data to locate and track Alan and Ms. Ezenwa's location. (CP at 12).

13. Petitioner contends the police violated her constitutional rights. (CP at 12). Under the public duty doctrine, the police and anyone else in the state, are under a duty of reasonable care to avoid creating unreasonable risks of harm to persons and property. The duty is well established in the common law. See, e.g., Restatement (Second) of Torts § 302 cmt. a.

14. And also, in Beltran-Serrano, this Court left no doubt that this duty applies to police officers who choose to affirmatively direct their official acts at an individual: "Under Washington common law, the City owes a duty to refrain from causing foreseeable harm in the course of law enforcement interactions with individuals." 442 P.3d at 615.

15. This Court should note, Couples in interracial relationships have faced a documented history of discrimination in this country. In 1967, in Loving v. Virginia, the U.S. Supreme Court recognized that state laws banning interracial marriage violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution. The case changed the legal landscape if not the daily realities of discrimination for couples in interracial relationships.

16. However, the ugly history of racist policing in America have terrorized people of color for centuries, and to this present day.

17. For example “The protests surrounding the deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery, the false accusations of Karens against African-American males, and the many corporate pronouncements supporting Black Lives Matter.” Letter from Washington State Supreme Court to Members of Judiciary and Legal Cmty. (June 4, 2020); *State v. Scabbyrobe*, No. 37124-7-III. Wash. Ct. App. (2021).

18. This case illustrates why people of color fear trusting the police to treat them equally. The power that a police officer have to manipulate the facts through exercise of discretion in the delivery of services is significant.

19. This is a largely legal matter. Both the state and federal Constitutions require the search for cell phone location data to be authorized by a warrant. *State v. Muhammad*, 194 Wn.2d 577, 595-96, 451 P.3d 1060 (2019); *Carpenter v. United States*, __ U.S. __, 138 S. Ct. 2206, 2221, 201 L. Ed. 2d 507 (2018).

20. In or around January 30, 2020, a dishonest CPD officer searched for Ms. Ezenwa’s residential address by using cell phone location data without a warrant, and as a result of that decision, three CPD officers were able to improperly enter Ms. Ezenwa’s place of residence (January 31, 2020) without consent. (CP at 12).

21. Given this context, the Court of Appeals argument fails here by making its decision based on the police report (the final product of one-sided police

investigation), and not considering a dishonest CPD officer intentionally omitted this information and misrepresented several facts in the majority of his police report. (CP at 12).

22. The Court of Appeals opinion erred on its legal conclusion, when it concluded that police did not violate Ms. Ezenwa's Fourth Amendment protections, and that the evidence suggest the police received consent from Ms. Ezenwa. (Appeals Opinion at 14).

23. Here, a de novo review is appropriate to ensure consistent application of privacy protections. "If the decision was based on a legal conclusion, it is reviewed de novo." *State v. Condon*, 182 Wash.2d 307, 315-16, 343 P.3d 357 (2015).

24. Additionally, the Courts held that “constitutional challenges are questions of law subject to de novo review." *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006);

25. Therefore, this Court review for Invasion of Privacy determinations should be de novo. *State v. Fedorov*, 335 P.3d 971, 183 Wn. App. 736, 183 Wash. App. 736 Wash. Ct. App. (2014); *State v. Smith*, 226 P.3d 195, 154 Wn. App. 695, 154 Wash. App. 695 Wash. Ct. App. (2010); *Brinegar v. United States*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949); *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860 (1981); *Ornelas v. United States*, 517 U.S. 690, 116 S. Ct. 1657 (1996).

26. Here, it should be noted the Court of Appeals' decision is in conflict with Fourth Amendment protections, and the Court committed legal error that undermined privacy protections.

27. Whereas, the primary purpose intended by the Amendment is to protect the people from undue government intrusions on privacy and liberty. In State v. Denham, the Supreme Court of the State of Washington held: "Our constitutions protect individual privacy against state intrusion." U.S. CONST. amend IV; WASH. CONST. art. I, § 7. "State agents must have either the authority of a warrant or a well-established exception to the warrant requirement to lawfully intrude into an individual's private affairs." *State v. Ladson,* 138 Wn.2d 343, 350, 979 P.2d 833 (1999) (quoting City of Seattle v. McCready, 123 Wn.2d 260, 273, 868 P.2d 134 (1994)). "This constitutional protection extends to cell phone location information held by cell phone companies." See *State v. Muhammad,* 194 Wn.2d 577, 580, 451 P.3d 1060 (2019); *Carpenter v. United States*, __ U.S. __, 138 S. Ct. 2206, 2220, 201 L. Ed. 2d 507 (2018).

28. The Court of Appeals' decision raises a significant question of constitutional law with regards to privacy interests protected by the Fourth Amendment. RAP 13.4(b)(3).

29. An individual has reasonable expectation of privacy in their location information and dignity against arbitrary government intrusions because the

Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and requires that warrants be issued only "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." See U.S. Const. amend. IV; Wash. Const. art. I, § 7.

30. The Court of Appeals' decision is worth reviewing because the issue requires a balancing of the significant public interest in law enforcement with the significant public interest in protecting the sanctity of the home against invasion of privacy by cell phone location information. See RAP 13.4(b)(4).

31. The Legislature approved of government liability under RCW 4.92.090 and RCW 4.96.010. In the classic question of safety or privacy, the courts have a proud history of safeguarding the privacy and peace that people find in their homes by requiring a warrant first to target certain individuals through cell phone location data. "Consistent with this history, courts often are called upon to adopt rules protecting the sanctity of the home against government intrusion." *Kyllo v. United States*, 533 U.S. 27, 37, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001).

32. Where, as here, the Court of Appeals' decision conflicts with Fourth Amendment rights. (Appeals Opinion at 14).

33. In Carpenter v. United States, the U.S. Supreme Court ruled that law enforcement agencies cannot request personal location information from a third party without first obtaining a search warrant from a judge.

34. As the United States Supreme Court observed, use of precise cell phone location information "provides an intimate window into a person's life, revealing not only his particular movements, but through them his 'familial, political, professional, religious, and sexual associations.'" Carpenter, 138 S. Ct. at 2217 (quoting *United States v. Jones*, 565 U.S. 400, 415, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) (Sotomayor, J., concurring)); see also Muhammad, 194 Wn.2d at 596 (Wiggins, J., lead opinion) & 612 (Gordon-McCloud, J., opinion).

35. For example, a search made without a warrant violated Ms. Ezenwa's Fourth Amendment rights and article I, section 7 of state constitution, and it clearly undermined the theory of consent because a dishonest CPD officer used precise cell phone location information that he got from third party without a warrant, to find the exact location of Ms. Ezenwa's residential address, and then provided that Cheney address to Alan's family without consent from the married couple. (CP at 12).

36. Petitioner had expectations of privacy in her own home and right to be free from unreasonable search. But from the start, the record indicates a dishonest CPD officer got the cell phone location information (CSLI) from

third party without a warrant, and that Ms. Ezenwa never received the necessary due process opportunity expected in a police investigation as Ms. Ezenwa was denied equal protection under the law by police, as evidenced by how police arrived at her place of residence to conduct a welfare check for Alan. (CP at 12).

37. Instead of obtaining a warrant or consent from Alan Carlin and Ms. Ezenwa, a dishonest Cheney police officer evaded Fourth Amendment protections for cell phone location information by obtaining that data from third party, and disclosing information about Alan and Ms. Ezenwa's residential address at Cheney to Alan's family without consent. (CP at 12).

38. In State v. Denham, the Supreme Court of the State of Washington further contends: "Historical cell site location information (CSLI) is protected by article I, section 7 of our constitution and the Fourth Amendment of the United States Constitution." *State v. Muhammad*, 194 Wn.2d 577, 580, 451 P.3d 1060 (2019) (Wiggins, J., lead opinion), 628 (Gordon McCloud, J., opinion); *Carpenter v. United States*, ___ U.S. ___, 138 S. Ct. 2206, 2220, 201 L. Ed. 2d 507 (2018). "Any search of CSLI violates article I, section 7 absent authority of law and violates the Fourth Amendment when it is unreasonable; both requirements are satisfied by a valid warrant." State v. Olsen, 189 Wn.2d 118, 126, 399 P.3d 1141 (2017); Carpenter, 138 S. Ct. at 2221. "The warrant requirement is not a mere

formality; it ensures that necessary judgment calls are made 'by a neutral and detached magistrate,' not 'by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Mitchell v. Wisconsin*, __ U.S. __, 139 S. Ct. 2525, 2543, 204 L. Ed. 2d 1040 (2019) (internal quotation marks omitted) (quoting *Schmerber v. California*, 384 U.S. 757, 770, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)).

39. The record also indicated the dishonest CPD officer not only violated clearly established law, as evidenced by the same dishonest CPD officer falsifying police report when it came to the name incident and disposition of Ms. Ezenwa while at her place of residence.

40. Here, the dishonest CPD officer inaccurate statement regarding Ms. Ezenwa's name incident supports Petitioner's additional argument.

41. Ms. Ezenwa directs this court's attention to the record of Ms. Ezenwa's certificate from Columbia University, in efforts to prove that she simply informed the Cheney police officer about her challenges with spelling her middle name, while successfully spelling and pronouncing both her first and last name. But, the dishonest CPD officer still insisted she should also spell and pronounce her middle name. (CP at 20).

42. Another example of omission in the same police report, we have two contradictory statements regarding Danielle Roselin's comment about Alan

Carlin's condition, specifically with regards to the sepsis statement. (CP at 12). This is a sign of omission.

43. On January 31, 2020, three Cheney police officers entered the home (where Alan Carlin and Ms. Ezenwa resided) without consent, and this law enforcement entry should raise some concerns because of certain things that happened outside of the record.

44. The Supreme Court of the State of Washington asserted that in Washington state, "[w]e have repeatedly recognized that the 'privacy protections [provided by article I, section 7 of our constitution] are more extensive than those provided under the Fourth Amendment.'" *State v. Peck*, 194 Wn.2d 148, 169, 449 P.3d 235 (2019) (quoting *State v. Valdez*, 167 Wn.2d 761, 772, 224 P.3d 751 (2009)). "For a warrant to properly issue in Washington, we have long required that warrant applications demonstrate specific factual nexus between the alleged criminal activity and the target of a search." *State v. Thein*, 138 Wn.2d 133, 140, 147-48, 977 P.2d 582 (1999).

45. This is a matter of significant public interest because if law enforcement agencies can evade their way around the Fourth Amendment's warrant requirement, the landmark protection announced by the U.S. Supreme Court in Carpenter will be in peril.

46. It should be noted under RAP 10.1(h), this Court may authorize the filing of briefs other than those specifically provided for in the rules.

47. The conflicts created by the Court of Appeals opinion is itself worthy of review under Rap 13.4(b)(1) and (2). But, the case also warrants review because the issue and additional argument presented are matters of substantial public interest. RAP 13.4(b)(4).

48. Although the issue was not raised in the Court of Appeals, this Court has discretion to decide an issue raised for the first time in the Petition For Review. *State v. McCollum,* 98 Wn.2d 484, 487, 656 p. 2d.

49. Granting Ms. Ezenwa leave to file an amended petition for review raising an additional issue and argument will enable this Court to fully uncover the truth, and therefore prevent a gross miscarriage of justice. RAP 18.8(b).

50. It should be noted under RAP 1.2(a) and 18.8(a), this Court may on its own initiate or on motion of a party, waive or alter the provisions of any of the rules of appellate procedure in other to serve the ends of justice. As specifically noted in RAP 1.2(a), except in compelling circumstances, the outcome of a case should not be determined on the basis of compliance with the rules of appellate procedure.

IV. CONCLUSION

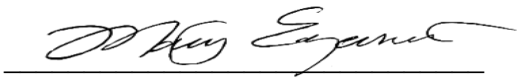
To prevent a gross miscarriage of justice, this Court should grant Ms. Ezenwa's eleventh request for leave to file an amended petition for review until today's date. RAP 18.8(b).

Respectfully submitted, this 31st day of July 2021.

Mary Ezenwa, Petitioner Pro Se

CERTIFICATE OF SERVICE

I, hereby certify that on this day July 31, 2021, I filed my Eleventh Motion for Leave to Amend Petition for Review with this court's electronic filing system which served the document to Dianna J. Evans, Attorney for Respondent.



Mary Ezenwa, Petitioner Pro Se

MARY CARLIN - FILING PRO SE

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