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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Ryan W. Allen,**

Appellant.

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Lewis County Superior Court

Cause No. 05-1-00436-8

The Honorable Judge Scott E. Blinks

**Appellant's Reply Brief**

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## ARGUMENT

### **I. THE EVIDENCE MUST BE SUPPRESSED BECAUSE IT WAS OBTAINED AS A RESULT OF AN UNLAWFUL WARRANTLESS SEARCH.**

A. The information provided by Ms. Allen was not independent of the officer's illegal detention of Mr. Allen.<sup>1</sup>

Respondent concedes that the detention of Mr. Allen was illegal, but argues that the evidence was admissible nonetheless. Brief of Respondent, p. 7-10. According to Respondent, Peggy Allen's identification of Mr. Allen was an independent source of information, insulated from the illegal detention of Mr. Allen. RP 7-8.

This is incorrect. The "ultimate question" in examining the validity of a search under the independent source doctrine is whether the search was actually based on "a genuinely independent source of the information..." *Murray v. United States*, 487 U.S. 533 at 542, 108 S. Ct. 2529; 101 L. Ed. 2d 472 (1988). Thus, for example, where illegally obtained information prompts officers to seek a warrant, or where the warrant is based in part on unlawfully obtained information, the source is not truly independent. *Murray, supra*, at 542.

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<sup>1</sup> The state's response brief does not address Appellant's arguments in order. For the sake of clarity, the original order is preserved here. Accordingly, this section replies to Section III B of the respondent's brief.

The information justifying Mr. Allen's arrest was not "genuinely" independent of the initial unlawful detention. *Murray, supra*. First, the officer's suspicion that Mr. Allen had given a false name when he was unlawfully seized prompted the officer to detain Ms. Allen and question her further. RP (11/18/05) 14-25. Second, the officer exploited the illegal detention by confronting Ms. Allen with his suspicion that Mr. Allen had given a false name. RP (11/18/05) 18-20. This prompted Ms. Allen to reveal Mr. Allen's true identity. RP (11/18/05) 19, 20. Accordingly, the independent source doctrine cannot insulate the arrest and search from the illegal detention.

Furthermore, Mr. Allen's rights were directly violated by the detention of Ms. Allen. He had just been detained and interrogated himself, and thus could not reasonably have believed he was free to leave when the officer detained and questioned his wife. RP (11/18/05) 14-25. Under these circumstances, it cannot be said that the interrogation of Ms. Allen was independent of the illegal detention of Mr. Allen.

For these reasons, the information from Ms. Allen was not independent of the illegal detention of Mr. Allen. The seized items must be suppressed, the convictions must be reversed, and the case must be dismissed with prejudice. *State v. Glossbrener*, 146 Wn.2d 670, 685, 49 P.3d 128 (2002).

B. Mr. Allen has automatic standing to assert a violation of Peggy Allen's rights.<sup>2</sup>

Respondent argues that Mr. Allen lacks standing to object to the unlawful seizure of Ms. Allen. Brief of Respondent, pp. 3-7. According to Respondent, Mr. Allen is precluded from relying on automatic standing because her illegal detention did not "produce" the methamphetamine. Brief of Respondent, p. 4.

This is incorrect. Respondent's argument rests on *State v. Williams*, 142 Wn.2d 17, 11 P.3d 714 (2000). In that case, the Supreme Court upheld a search incident to arrest following a warrantless entry into a third party's residence to serve an arrest warrant. After pointing out that the defendant was not contesting the seizure of his person, but only the unlawful warrantless entry into the residence, the Court declined to apply the automatic standing rule, reasoning (in part)<sup>3</sup> as follows:

Inherent in the conditions for automatic standing is the principle that the "fruits of the search" bear a direct relationship to the search the defendant seeks to contest. [Here, the defendant] is challenging only the officers' entry into a third party's residence to serve the arrest warrant. The defendant's ability to challenge that entry does not depend upon his admission to possession of contraband or to any other illegal activity. We

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<sup>2</sup> This section responds to Section III A of respondent's brief.

<sup>3</sup> The Court also determined that the challenged search was lawful, and the evidence would be admissible even if the defendant had standing in his own right. *Williams, supra*, at 23-24.

cannot agree that the automatic standing rule as originally conceived by the Supreme Court would have any application where there is no conflict in the exercise of his Fourth and Fifth Amendment rights. Moreover... the automatic standing rule may not be used where the defendant is not faced with “the risk that statements made at the suppression hearing will later be used to incriminate him albeit under the guise of impeachment.” *State v. Williams*, 142 Wn.2d 17 at 23, 11 P.3d 714 (2000), *citation omitted*.

This passage demonstrates why Mr. Allen is entitled to rely on automatic standing. First, in contrast to the defendant in *Williams*, Mr. Allen *does* contest the seizure of his person. Second, if Mr. Allen were denied the benefit of the automatic standing rule, his ability to contest the seizure of his person would depend on admitting that he was the person seized. The existence of the restraining order renders such an admission incriminating. Accordingly, his Fifth Amendment privilege against self-incrimination is in tension with his Fourth Amendment and Article I, Section 7 rights to be free from unlawful searches and seizures. The automatic standing rule is designed to protect people in Mr. Allen’s position. *Williams, supra*, at 23; *see also* Brief of Respondent, p. 5-6.

Respondent does not suggest that the detention of Ms. Allen was lawful. The legality of the arrest and subsequent search therefore depends solely on the issue of whether or not Mr. Allen has standing. Because he does have standing under *Williams*, the evidence should be suppressed. The conviction must be reversed and the case dismissed with prejudice.

**II. MR. ALLEN DID NOT VALIDLY WAIVE HIS CONSTITUTIONAL RIGHT TO A JURY TRIAL UNDER THE STATE CONSTITUTION.**

Respondent asserts that Mr. Allen's waiver was valid, citing two cases that address the issue under the Sixth Amendment to the U.S. Constitution. Brief of Respondent, p. 10-11.

But Mr. Allen's argument is brought under the Washington State Constitution. *See* Appellant's Opening Brief, pp. 11-18. In a footnote, Respondent references an unpublished opinion, tap-dancing around the rule prohibiting such citations. Respondent should seek permission to file a supplemental brief if the unpublished opinion is later published; Mr. Allen will respond to the argument at that time.

**CONCLUSION**

For the foregoing reasons, the convictions must be reversed, the evidence suppressed, and the case dismissed with prejudice.

Respectfully submitted on August 28, 2006.

**BACKLUND AND MISTRY**

  
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CERTIFICATE OF MAILING

STATE OF WASHINGTON

BY JRM  
QUALITY

I certify that I mailed a copy of Appellant's Reply Brief to:

Ryan W. Allen  
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and to:

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And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on August 28, 2006.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on August 28, 2006.

  
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