

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
07 OCT 2006  
STATE OF WASHINGTON  
BY *[Signature]*

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
Rodney A. Wilson )  
(your name) )  
)  
Appellant. )

No. 35621-0-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Rodney A. Wilson, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

1. Second suppression motion based on two false affidavits for search warrants. One for 35 Leonard Road Hoguam, Trailer and Toyota Celica. Two for Cranberry Motel in Westport. Motion denied on October 30, 2006 page 254-256 of verbatim reports

Additional Ground 2

2. Motion to sever counts 1, 2 and 3 from 4, 5 and 6. Filed August 22, 2006. Motion denied on September 28, 2006 C.R. 4.4. Motion Renewed, page 197 line 1 of verbatim reports.

Additional Ground 3

Objection to holding a Pre Trial Detainee in a Max security prison without Due Process.

If there are additional grounds, a brief summary is attached to this statement.

Date: 10-4-07

Signature: *Rodney A. Wilson*

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NO. 35621-0-II  
THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

Statement of Additional Grounds For Review  
Appellant: Rodney A. Wilson  
Grays Harbor County

**Additional Ground 1**

Second suppression motion based on two false affidavits for Search warrants.

This issue is covered in Opening Brief, but I don't believe it was fully covered. Opening brief states The Court found that motion was not timely and did not hear the issue. That is a misstatement. The motion was heard and denied on October 30, 2006.

I filed this motion October 11, 2006 on the second day of trial. I made it known to the Honorable Judge Mark McCauley and State at the Pre-Trial Proceedings. Page 42 on Record of Verbatim Reports. Page 42, lines 10 to 14. The Honorable Judge Mark McCauley granted me the opportunity to file both motions to suppress. Page 153, Line 20. Objection on Record to the evidence being admitted. Page 153, Line 24. The Honorable judge Mark McCauley granting to reserve Objection until the motion to suppress is heard.

Page 115. Don Kolilis is the officer who relayed the information to Andrea Vingo. Don Kolilis states on record he knew the license plate number of the car was not given. Kolilis states, Vingo added it to her sworn Declaration for Search Warrant.

This requires a Franks Hearing.

Definition: A hearing to determine whether a Police Officer's affidavit

used to obtain a search warrant that yields incriminating evidence was based on false statements by the officer. *Franks v Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d. 667 (1978)

Page 254. The motion to suppress is heard. Also page 255, Line 10. The State stating, "I realize that the information is incorrect. Page 256, Line 10. The Court denying motion to suppress. The Court also stating they were negligent mistakes.

#### **ARGUMENT:**

There was a burglary at 8 Riverview Drive in Humptulips. John L. Grow residence. A neighbor, Chris Cain, told police he saw a blue Toyota Celica with popup lights and a spoiler on the back, pull away from the Grow residence. This was in the morning hours.

Deputy Fritts responded. At approximately 12:30 Deputy Fritts arrived at 35 Leonard Road where he sees a car fitting the discription of a car that might of been involved in a burglary earlier that morning. A suspect fled the scene. Other suspects are detained and questioned. A Detective Don Kolilis relays information to Andrea Vingo who in a sworn affidavit states the information being: Mr. Grow noticed a 1980's blue Toyota Celica with a spoiler and Washington License 132 MBL, leave from the area of his residence when he arrived home that morning.

Page 60, Line 6 to 8. Mr. Grow testified at trial stating he did not witness any car leave the area of residence that morning.

Without this information there is no evidence or testimony to tie this car to a burglary that happened hours before in Humptulips,

another town. Chris Cain gave a description of a car, but the license plate number was never given and Chris Cain never positively identified the car. Page 65, Line 11 to 14. Chris Cain further testifies at trial that he did not know if the car was even involved in the burglary.

The affidavit goes on to state further false information, stating: At approximately 12:30pm, Deputy Fritts arrived at 35 Leonard Road and contacted an occupant, later identified as Colleen Hicks. Deputy Fritts asked her if she had any information about the 3 Riverview Drive residential burglary, including any guns or the Toyota that had been stolen. Ms. Hicks indicated that Rodney Wilson had arrived at 35 Leonard road about noon that day, and told her that he had a number of guns for sale. She stated that he had left some of the guns, which she described as long weapons, at the residence behind her couch, and left with the rest of the firearms. Ms. Hicks also confirmed that Wilson had arrived in a blue older model Toyota with a spoiler.

This information is also false. See Deputy Fritts and Collen Hicks testimony.

State v Hattrup, NO. 15220-1-III(Wash.App.Div.3(1996) State v Rakosky, 79 Wn.App. 229, 901 P.2d. 364 (1995) Motion to suppress is granted for not colaberating information in Affidavit. State v Woodall, 100 Wash 2d. 74-76, 666 P.2d. 364 (1983) Reversed on Appeal for false affidavit.

The exclusionary rule requires that evidence obtained directly or indirectly through government violations of the Fourth, Fifth,

or Sixth Amendments may not be introduced by the prosecution at trial, at least for the purpose of providing direct proof of the defendant's guilt. When a Court improperly admits evidence in violation of the exclusionary rule, reversal is required unless the error was harmless beyond a reasonable doubt. U.S. v Dice, 200 F.3d 978, 983, 2000 FED App. 0005P(6thCir.2000)

The false affidavit clearly violated my right to privacy under Washington Constitution Article I § 7 and United States Constitution, Fourth Amendment.

There is a unknown number of blue Toyotas in Washington. Detective Don Kolilis relayed false information to insure the issue of the warrant. that proves it was done knowingly and intentionally, because the license plate number is the key information that would place this car in the area of the burglary. Don Kolilis states it was Andrea Vingo who added that to her sworn affidavit. I was denied the right to question her at a Franks Hearing to see who is telling the truth. The motion to suppress should have been granted and the evidence seized, suppressed. The evidence was used to convict for Possession of a stolen firearm.

Under CrR 2.3 Search and Seizure (c) Issuance and Contents: The recording or a duplication of the transcribed recording shall be part of the court record and shall be transcribed if requested by a party, if there is a Challenge to the validity of the warrant or if ordered by the court. the evidence shall be preserved and shall be subject to Constitutional limitations for probable cause.

The information by Don Kolilis to Andrea Vingo should of been recorded and transcribed and made a record of the Court.

The motion to suppress the evidence recovered, while conducting the search warrant, should be granted and suppressed.

#### **Additional Ground 2**

Motion to sever counts 1, 2 and 3 from 4, 5 and 6. I filed the motion August 22, 2006. The motion was denied on September 28, 2006. Page 197, Line 1 of Verbatim reports. I asked the Court to renew motion to sever charges on record.

This issue is covered in Opening Brief, but it did not cover the fact I did renew the motion during trial, which is required in CrR 4.4. Opening brief states: The record does not indicate that Wilson renewed this motion during trial. This is a miss statement of fact. Page 197, Line 1 of verbatim reports. Mr. Wilson asks the court, The Honorable Judge Mark McCauley, during trial, to renew the motion to sever the charges. The Court denying my request. Page 197, Line 3 to 5.

This issue should be fully reviewed on Appeal and not deemed waived. The record shows that Mr. Wilson asked the court to renew the motion during trial. CrR 4.4 requires a defendant to renew a pretrial motion for severance, which has been overruled, "before or at the close of all the evidence." Failure to renew the motion waives severance. The rule only requires to renew the motion before or at the close of the evidence. This was done during trial. Page 197, Line 1 of Verbatim reports.

See Opening Brief for Argument.

### Additional Ground 3

Objection to holding a Pre-Trial Detainee in a Max Security Prison without Due Process. This is a violation of my Eighth Amendment Right under the Due Process Clause. Objection on Record, page 35, Line 23 of Verbatim reports.

Under the Constitution Amendment a person who has not been convicted of a crime can not be held to any form of state punishment. A Pre-Trial Detainee should be held to the least restricted form of confinement. As a Pre-Trial Detainee I was held at Stafford Creek Correction Center in the Intensive Management Unit as a form of punishment. Every other inmate housed in the IMU has been convicted of a felony and committed a serious W.A.C. violation and held in the IMU for their punishment.

Bell v Wolfish, 441 U.S. 520,535,538-539, 99 S.Ct. 1861(1979) Lyons v Powell, 838 F.2d 28,31(1st Cir.1988)(excessive lock-in and sleeping on a floor mattress stated a claim of unlawful punishment as to a Pre-Trial Detainee held in a state prison.) Lock v Jenkins, 641 F.2d 488,492-494,498(7th Cir,1981)(excessive lock-in times for detainees held in a state prison constituted punishment.)

I was locked down 23 hours a day with restricted phone use and denied all visitation. This was done to prevent me from defending my case.

See. Covino v Vermont Dept. of Corr., 933, F.2d 128,130

(2dCir.1991)(nine-month confinement of a detainee in administrative segregation constitutes punishment and should be analyzed under Wolfish.) U.S. v Gotti, 755 F.Supp. 1159,1164 (E.D.N.Y. 1991)(placing a detainee an administrative detention based on his criminal charges constitutes punishment.)

I am the defendant and I believe my Due Process Rights to defend my case were violated by holding me as a Pre-Trial Detainee in the Intensive Management Unit on Administrative Segregation without any Due Process restricted my ability to properly defend my case.

#### **Relief Requested**

I am asking the Court for reversal and believe it is the only remedy for the cumulative errors that did infact deny me a fair trial.

1) Denying motion to suppress without a Franks Hearing with overwhelming evidence of a false affidavit. That evidence should have been suppressed for it was prejudicial to the charge of Possession of Stolen Firearm. Without that evidence there would be no probable cause for the charge. That Charge and evidence is also prejudicial to the defense of the the other five charges. I respectfully request a reversal and remand this matter for a new trial, based on those reasons.

2) Denying motion to sever charges. The charge of possession of Methamphetamines and the evidence of that charge was prejudicial to the defense of the other charges. The State used that evidence for

