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## **I. ANSWER TO ASSIGNMENT OF ERROR**

The search of Haight's vehicle did not violate Article I, Section 7 of the Washington State Constitution.

## **II. STATEMENT OF THE CASE**

Respondent agrees with the statement of the case as set forth by the Appellant. However, the State would draw the Court's attention to the following details of the arrest:

Mr. Haight remained in his vehicle while Officer Sawyer returned to his police vehicle and ran the vehicle registration and driver's license. RP 20. Officer Sawyer then returned to the vehicle to speak with Mr. Haight to investigate the charge of DUI. RP 20. As part of the DUI investigation, Officer Sawyer asked if Mr. Haight would be willing to perform the sobriety tests. RP 20. Mr. Haight agreed and exited the vehicle. RP 21. The field sobriety tests were performed on the sidewalk next to the road. RP 21. Officer Sawyer concluded at the end of the sobriety tests that Mr. Haight was driving under the influence and subsequently arrested him. RP 26-27. Officer Sawyer handcuffed Mr. Haight, advised him of his Miranda warnings and placed him in the back of the patrol car. RP 28. Officer Sawyer then conducted a search of the vehicle, incident to arrest. RP 28.

### III. ARGUMENT

i. **A VEHICLE SEARCH INCIDENT TO ARREST OF THE DRIVER DOES NOT VIOLATE ARTICLE I, SECTION 7 WHEN THE ARRESTEE WAS IN THE VEHICLE WHEN THE VEHICLE WAS STOPPED AND THE SUBSEQUENT ARREST OCCURRED ADJACENT TO THE VEHICLE.**

The appellant acknowledges that that under *State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986), Officer Sawyer was permitted to search Mr. Haight's vehicle after he was arrested and placed in the patrol car. However, appellant argues that because Mr. Haight was securely in the back of the patrol car, no exigent circumstances existed which necessitated the search and thus violated Mr. Haight's privacy. Appellant claims that the *Stroud* court had little jurisprudence to draw upon and in the last two decades the *Stroud* search incident to arrest rule has become incompatible with subsequent jurisprudence interpreting an individual's right to privacy under Article I, Section 7. However, the case law since *Stroud* does not support this claim.

In *State v. Turner*, 114 Wash. App. 59 P.3d 711 (2002) the court explained that *Stroud* required, as a prerequisite to the search incident to arrest, that the vehicle must have been "within the suspect's immediate control at the time of or immediately subsequent 'to the suspect's being arrested, handcuffed and placed in a patrol car[.]'" quoting *Stroud*, 106

Wash.2d at 152, 720. While the court declined the invitation to extend *Stroud* to circumstances where there were no facts to prove the suspect's proximity to the vehicle and thus nothing to prove the vehicle was within the suspect's immediate control when approached by the arresting officer, the court explained that the search incident to arrest hinged on the suspects "physical and close temporal proximity" Id. at 657, 713.

In *State v. Johnson*, 107 Wash. App 280, 285. 28 P.3d 775,777 (2001), the court explained the "key question when applying *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860 (1981) and *Stroud* is whether the arrestee had ready access to the passenger compartment at the time of arrest." Ready access was further defined as whether the suspect "could suddenly reach or lunge into the compartment for a weapon or evidence." Id.<sup>1</sup>

In *State v. Fore*, 56 Wash. App. 339, 783 P.2d 626 (1989), the defendant claimed, as here, that *Stroud* was inapplicable because "there was no possibility that he might reach the vehicle to obtain a weapon or destroy evidence. Id at. 347, 631. The court did not accept the defendant's contention and explained that even though the "bright-line" rule in *Stroud* rests "on traditional justifications that a suspect might easily

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<sup>1</sup> In each case, the focus of the court has been on the position of the suspect at the moment in time when the officer places them under arrest. See *State v. Johnston*, 107 Wash.App 280, 28 P.3d 775 (2001).

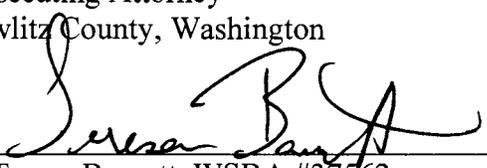
grab a weapon or destroy evidence, the validity of a *Stroud* search does not depend on an arrestee being in the vehicle when police arrive or on the physical ability of an arrestee to reach in to the vehicle.” *Id.* Another important aspect of that case is that the vehicle in *Fore* was directly connected to the probable cause determination supporting the arrest. In the present case, Mr. Haight was arrested for DUI after being stopped in the vehicle which was ultimately searched.

#### IV. CONCLUSION

Appellant’s alleged error is without basis in law. As these claims are without merit, the Court should dismiss this appeal pursuant to RAP 18.14(e)(1).

Respectfully submitted this 22<sup>nd</sup> day of October, 2008.

Susan I. Baur  
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By   
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
v. )  
 )  
 ROGER LEE HAIGHT, )  
 )  
 Appellant. )

NO. 37305-0-II  
07-1-00047-7  
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MICHELLE SASSER, being first duly sworn, on oath deposes and says: That on October 23, 2008, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the following:

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ATTORNEY AT LAW  
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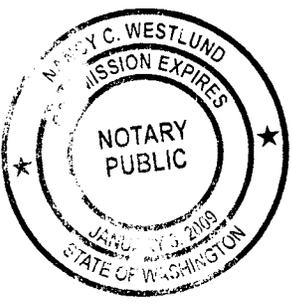
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TACOMA, WA 98402-4454

each envelope containing a copy of the following documents:

- 1. BRIEF OF RESPONDENT AND MOTION ON THE MERITS
- 2. Affidavit of Mailing.

*Michelle Sasser*  
MICHELLE M. SASSER

SUBSCRIBED AND SWORN to before me this October 23, 2008.



*Nancy C. Westlund*  
Notary Public in and for the State  
of Washington residing in Cowlitz  
Co. My commission expires: 1.3.09