

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
) 08-1-00710-3
) V.) No. 38565-1-II
)
) STATEMENT OF ADDITIONAL
) AZAEL LOPEZ) GROUNDS FOR REVIEW
)
)
)
) Appellant.)



I, Azael Lopez, have received and reviewed the opening brief by my attorney. Summarized below and on the following pages 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

Ineffective assistance of counsel:

It is very apparent from the record that identity is the key issue to the Delivery of the controlled substance on 2-20-08. However, alarmingly, Neil Anderson and Lisa Tabbut have both failed to acknowledge the gravity of the situation. In the record the testimony begins with a textbook ILLEGAL pre-text stop. RP 103-104, 112-116. (10-27-08). All the police knew, was that the 'targets' name was JOSE. RP 118

**The State of Washington, Respondent, v. Jesus M. Montes-Malindas, Appellant.
COURT OF APPEALS OF WASHINGTON, DIVISION THREE
144 Wn. App. 254;182 P.3d 999;2008 Wash. App. LEXIS 991
No. 25280-9-III
April 29, 2008, File**

The counsel of record Mr. Anderson failed to seek a suppression hearing.

The Supreme Court has held that the right to counsel attaches at arraignment, and recognizes the importance of effective assistance of counsel not just at trial, but during the time preceding a trial.

During perhaps the most crucial period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself. *Powell v. Alabama*, 287 U.S. 45, 57, 53 S. Ct. 55, 77 L. Ed. 158 (1932).

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Additional ground 1 (cont.)

[10-12] 27 To prevail on an ineffective assistance of counsel claim, the defendant must show that (1) defense counsel's representation was deficient in that it fell below an objective standard of reasonableness and (2) the deficient performance prejudiced the defendant. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (applying two-prong test of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). We presume counsel is effective, and the defendant must show there was no legitimate strategic or tactical reason for counsel's action. *Id.* at 335.

The illegally obtained identification was paramount to the States case.
There is no legitimate or tactical reason for Mr. Andersons' deficient performance, by not seeking a suppression hearing.
By the officers own admissions, in the record, do we see that the traffic stop was conducted to further a criminal investigation.

(Failure to seek severance was ineffective assistance of counsel)

**The State of Washington, *Petitioner*, v. Randy J. Sutherby, *Respondent*. *In the Matter of the Personal Restraint of Randy J. Sutherby, Petitioner*.
SUPREME COURT OF WASHINGTON
165 Wn.2d 870;204 P.3d 916;2009 Wash. LEXIS 358
No. 80169-0
June 12, 2008, Argued
April 9, 2009, Filed**

ADDITIONAL GROUND 2

Insufficient evidence to prove bus stop enhancement:

The Superintendent testified that there is a school bus stop in the area. RP 136
However, this is no markings or anything to prove the bus stop is there.
The record is unclear as to whether or not it is marked. RP 137-138

More importantly the record is unclear as to the true distance of
1,000 feet or less. RP 152

An allegation under RCW 69.50.435(1)(c) that a controlled substances offense was committed
within 1,000 feet of a school bus route stop is not proved unless there is sufficient evidence of the
actual physical distance between the place where the offense occurred and the location of a
school bus route stop.

The State of Washington, Respondent, v. Gene Jones, Appellant.
COURT OF APPEALS OF WASHINGTON, DIVISION TWO
140 Wn. App. 431; 166 P.3d 782; 2007 Wash. App. LEXIS 2547

The bus stop information was not readily available to me, nor, did I know of it's location:

The court held that by giving a special verdict form that explicitly stated that YEP was a school
the trial court violated Wash. Const. art. IV, 16. The court also found that defendants were denied
due process when their sentences were enhanced based upon their proximity to school grounds,
the location of which could not be ascertained by any readily accessible means. The court stated
that although defendants' actual lack of knowledge of the protected zone around YEP was
irrelevant to culpability, a readily available means by which they or others of ordinary intelligence
could have determined the existence of the protected school zone was a constitutional necessity.
Because YEP was not readily ascertainable as a school, defendants' enhanced sentences were
vacated.

U.S. Const. amend. XIV, the Due Process Clause, requires fair warning of proscribed conduct. A
statute is unconstitutionally vague if (1) the statute does not define the criminal offense with
sufficient definiteness that ordinary people can understand what conduct it forbids, or (2) the
statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

State V. Becker
SUPREME COURT OF WASHINGTON
132 Wn.2d 54; 935 P.2d 1321; 1997 Wash. LEXIS 239
No. 63874-8

Page 30F 45

Additional ground 2 (continued)

The school bus stop enhancement cannot be truly ascertain due to the fact that the (probable cause affidavit states that "A controlled buy was conducted at a residence in Clark County.") There is no address given and the map provided by G.I.S. shows the suspected location as a building and the record reflects that it was supposedly conducted at a trailer. SEE report number VPD 08003448. Officer Spencer Harris.

^
Discovery

Page 3A OF 5

Date: 08.13.09

Signature: 

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COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON) NO. 38565-1-II
)
)
) STATEMENT OF ADDITIONAL
) GROUNDS FOR REVIEW
V.)
) **SUPPLEMENTAL**
AZAEL ORTIZ-LOPEZ)

FILED
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COURT OF APPEALS
DIVISION TWO
STATE OF WASHINGTON
NOV 10 2015

I, Azael Ortiz-Lopez, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional SUPPLEMENTAL 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

*Ineffective assistance of counsel:
My attorney failed to seek a suppression of the evidence gained through this illegal stop.*

The officer testified under oath that the STATED PURPOSE for the stop was a “traffic stop.” RP 112, 116

**STATE V. LADSON
SUPREME COURT OF WASHINGTON
138 Wn.2d 343;979 P.2d 833;**

Absent controlling precedent, a party asserting a provision of the state constitution offers more protection than a similar provision in the federal constitution must persuade the court this is so by means of the analysis set forth in State v. Gunwall. Under Gunwall, the court considers six nonexclusive factors. Once the court has conducted a Gunwall-type analysis and has determined that a provision of the state constitution independently applies to a specific legal issue, in subsequent cases it is unnecessary to repeat the Gunwall-type analysis of the same legal issue. It is already well established that Wash. Const. art. I, 7 has broader application than does the U.S. Const. amend. IV.

Police may not abuse their authority to conduct a warrantless search or seizure under a narrow exception to the warrant requirement when the reason for the search or seizure does not fall within the scope of the reason for the exception.

Additional ground 1 cont.

We begin our analysis by acknowledging the essence of this, and every, pretextual traffic stop is that the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving. Therefore the reasonable articulable suspicion that a traffic infraction has occurred which justifies an exception to the warrant requirement for an ordinary {979 P.2d 838} traffic stop does not justify a stop for criminal investigation.

We have observed that ultimately our state constitutional provision is designed to guard against "unreasonable search and seizure, made without probable cause." *State v. Fields*, 85 Wn.2d 126, 130, 530 P.2d 284 (1975). However, the problem with a pretextual traffic stop is that it is a search or seizure which cannot be constitutionally justified for its true reason (i.e., speculative criminal investigation), but only for some other reason (i.e., to enforce traffic code) which is at once lawfully sufficient but not the real reason. Pretext is therefore a triumph of form over substance; a triumph of expediency at the expense of reason. But it is against the standard of reasonableness which our constitution measures exceptions to the general rule, which forbids search or seizure absent a warrant. Pretext is result without reason.

In my case the police were conducting a criminal investigation, while hiding behind the(STATED PURPOSE) for the detention, which the police testified, was a "traffic stop." **RP 112, 116**

I would respectfully ask the Court to consider this issue and vacate and remand for a suppression hearing and or new trial.

ADDITIONAL GROUND 2

DISCOVERY VIOLATION AND PROSECUTORIAL MISCONDUCT:

This is a blatant disregard for the professional rules that apply to every prosecutor in this nation.

I have recently in the past two weeks discovered that the State and Scott Ikata PLAINTIFF counsel, filed a discovery packet to my attorney Jeffery Barrar which contains a G.I.S. map, which, is used to prove my School bus stop enhancement.

The testimony at trial was that the delivery occurred on 9404 Ward RD. **RP 127** However, the map provided to the defense shows the address as 2800 Stapleton RD. Which, after further investigation is proved to be the WEST PRECINCT POLICE STATION in Vancouver Washington.

The evidence to prove this is the police officers own police report.

Which I have provided along with the map for the Court. SEE Appendix A, B.

I have also provided the discovery form and charging information signed by prosecutor SCOTT IKATA of the Clark County Prosecutor's Office.

I would respectfully ask the Court to supplement the record with these documents the G.I.S. map and the police address and police report LABELED ADMINISTRATIVE information. SEE Appendix B.

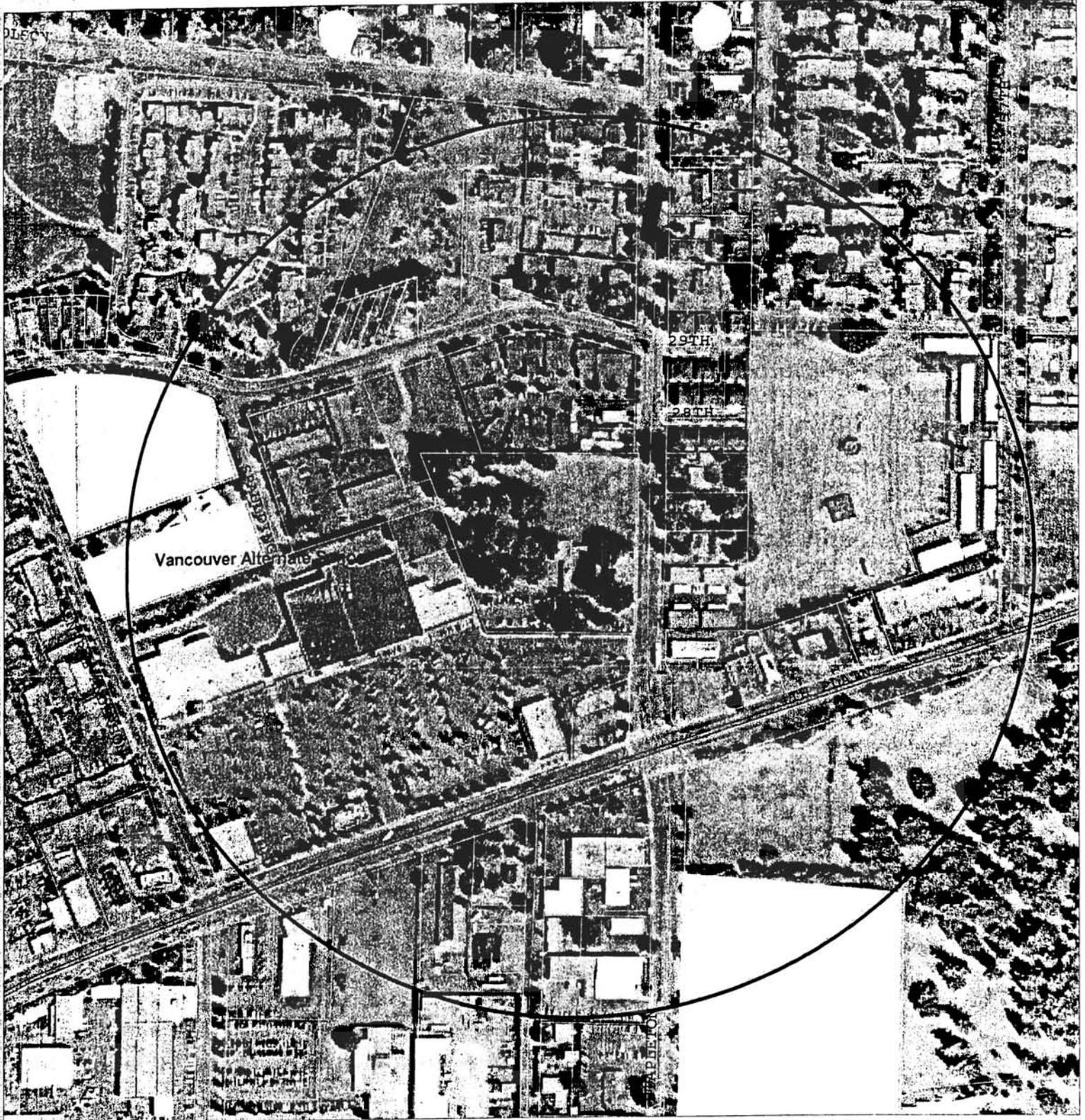
I clearly was not given the opportunity to have a fair trial. And my attorney was misled by the State.

My attorney also failed to recognize this violation of my right to due process afforded by the fourth and fourteenth amendment.

Date: 09.14.09

Signature: 

APPENDIX A



Prosecutor School Zone Check

Suspect Location:

★ Serial Number: 030243-010
 SUB DIV YOUNG EST #2 TT 3A 3.08A
 VANCOUVER, 98661

State v Azael Ortiz Lopez
 PA Case # PF 2008-1076

SW 1/4 of Section 19 T2R2E WM

School Bus Stop:

3204 Stapleton

Neighboring Schools:
 Vancouver Alternate School



100 0 100 200 300 400 Feet



Appendix A

APPENDIX B

Appendix B

Vancouver Police Department				Case No. 08-3448
605 E. Evergreen Vancouver, WA 98661		(360) 487-7400 (360) 694-9646 (FAX)		Report ID ORIGINAL
Incident Report				RCN
Records Center				DOR 02/21/2008
707 W 13TH Street Vancouver, WA 98660		(360) 397-2211 (360) 397-6074 (FAX)		Officer Assaulted <input type="checkbox"/> Non Disclosure <input checked="" type="checkbox"/>
Distribution NONE				Distribution Other
init	pDis	sDis	dEnt	M.C.
				Concl
				Case
				F/U
				Ret
				Let
				Status <input type="checkbox"/> IR <input type="checkbox"/> A <input type="checkbox"/> AR <input type="checkbox"/>

Administrative Information			
Location 2800 STAPLETON RD		City VANCOUVER	
Local Geo		State Zip Code WA	
State Geo		Geo	
Precinct V WEST			
Rep Date 02/20/2008	Rep Time 08:25	From Date 02/20/2008	From Time 07:05
To Date 02/20/2008	To Time 08:25	Category	Class
Premise RE			
Dom Viol <input type="checkbox"/>	DV Card <input type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>
Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>	Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>
Drugs <input checked="" type="checkbox"/>	Computer <input type="checkbox"/>		

Offense Information			
Off # 1	Offense NARCOTICS . INV	Offense Category INFO	Offense Translation Cont buy no criminal charging
Location Type OTH RES			Attempted or Completed C

Individual												
Role S	Seq 1	Type I	Last Name ORTIZ LOPEZ			First Name AZAZEL			Middle Name		Sex F	Race W
Birthdate 10/11/1987		Eth										
Age Low 20	Age High	Hgt 508	Wgt 140	Hair BLK	Eyes BRO	Residence F	Employment/Occupation					
Driver's License Number ORTIZA*131PJ			Driver's License Issuer WA		Social Security No.		State ID No.		FBI No.		PCN	
Custody Status		Gang Affiliation			Tribe Affiliation			Identifiers				
Comments												
Type H	Location 2211 E 30TH ST #D					City VANCOUVER			State WA	Zip Code 98663		

Individual												
Role S	Seq 2	Type I	Last Name RUBIO-VALOVINOS			First Name SILVERIO			Middle Name		Sex M	Race W
Birthdate 01/13/1983		Eth										
Age Low 25	Age High	Hgt	Wgt	Hair	Eyes F	Residence	Employment/Occupation					
Driver's License Number			Driver's License Issuer		Social Security No.		State ID No.		FBI No.		PCN	
Custody Status		Gang Affiliation			Tribe Affiliation			Identifiers				
Comments												
Type H	Location 216 SE 188TH #71					City PORTLAND			State OR	Zip Code 97233		

Reporting Officer Harris, Spencer	PSN 1300	Ref Case Number	ORIGINAL	Report ID 08003448	Agency/Case Number VPD 08003448
Approving Officer Skarpho, Richard	PSN 1177				
Report printed by: 0120					
Page 1 of 2					

APPENDIX C

Appendix C

COPY
MAY 06 2008
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

INFORMATION

Plaintiff,

v.

AZAELO RTIZ LOPEZ,

No. 08-1-00710-3

Defendant.

(VPD 08-3448)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - DELIVERY OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE - 69.50.401(1),(2)(b)

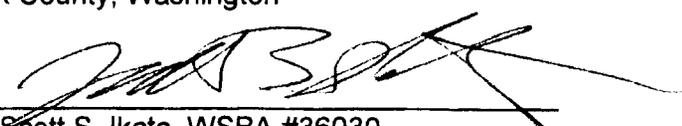
That he, AZAEL ORTIZ LOPEZ, in the County of Clark, State of Washington, on or about February 20, 2008, did knowingly deliver a controlled substance, to-wit: Methamphetamine; contrary to Revised Code of Washington 69.50.401(1), (2)(b).

And further, that the defendant did commit the foregoing offense within 1,000 feet of the perimeter of the school grounds, pursuant to RCW 69.50.435(1)(c) and RCW 9.94A.533(6). [SCHOOL ZON]

And further, that the defendant did commit the foregoing offense within 1,000 feet of a school bus route stop, in violation of RCW 69.50.435(1)(b) and RCW 9.94A.533(6). [SCHOOL BUS]

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: May 6, 2008

BY: 
Scott S. Ikata, WSBA #36030
Deputy Prosecuting Attorney

Appendix C

new
6-19

CLARK COUNTY PROSECUTING ATTORNEY DISCOVERY REQUEST FORM

2007190-25
5/6/08

DEFENSE ATTORNEY	COURT DESIGNATION	TYPE OF CASE
<input type="checkbox"/> RETAINED <input type="checkbox"/> COURT APPOINTED	<input checked="" type="checkbox"/> FELONY <input type="checkbox"/> MISDEMEANOR	<input type="checkbox"/> DRUG COURT <input type="checkbox"/> PROBATION VIOLATION

DEFENDANT	CHARGE(S)	CAUSE NUMBER
Robert D. Smith	veh. cont. sub.	08-1-0010-25

This certifies that I am the attorney representing the above-named criminal defendant. I am requesting discovery without necessity of formal motion. I agree pursuant to CrR 4.7(h)(3) and CrRLJ 4.7(g)(3) that police reports and all other materials furnished to me pursuant to the court rules *shall remain in my exclusive custody* and shall be used only for the purposes of conducting the defendant's side of the case. *If your client fails to appear*, you should retain the discovery materials. *If new counsel appears* in this case, you should forward all discovery to this attorney. If, for any reason, this office must make duplicate copies there will be a monetary charge assessed.

Attorney for Defendant or Representative (MUST BE LEGIBLE) WSBA # <u>16201</u> Firm Name <u>WLD</u>	REQUEST RECEIVED	ATTORNEY RECEIPT
	RECEIVED MAY 14 2008 Prosecutor's Office Discovery Completed	Signature <u>ST</u> Date <u>5/21/08</u>