

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JOHN WORTHINGTON, *Appellant,*

v.

WASHINGTON STATE PATROL,
Respondent,

REPLY BRIEF OF APPELLANT

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

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ORIGINAL

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INTRODUCTION

Comes now the Appellant John Worthington Pro Se, to respond to the Respondent's (hereafter WSP) reply brief regarding Worthington's appeal of the Thurston County Superior Courts decision to grant a Motion for Summary Judgment.

RESPONSE TO WSP ARGUMENTS

WSP's introduction states that this was a DEA investigation conducted by the DEA. However the record will show in CP 238-242, that TNET is merely an intergovernmental association not DEA ,State Patrol ,County or City, and can not be a separate legal entity unless mandated by an act of legislature. The only act of the Washington State legislature regarding the coordination of multi jurisdictional drug task forces is spelled out in RCW 43.43.655, which shows a division of the Washington State patrol drug control assistance providing a service to the Federal, state and local agencies. The agreement to which the WSP refers to which allows the DEA to be in charge of Mr. Bjornberg, did not come with any documents showing that the agreement had been signed by the chief of the WSP or reviewed by the Washington State Attorney General, and recommended to be signed, or the approval of the Washington State legislature allowing the WSP to transfer state sovereign authority to the DEA. The regional task force agreement is also bereft of agreements with the county or cities that would be required to make TNET a DEA entity. If the U.S Ninth Circuit Court of Appeals were to revisit Hervey v. Estes, and were to rule again on TNET's status with what the WSP has submitted in this case, their decision would be the same, because TNET lacks the act of legislation

that would allow State, County, and City law enforcement to be a DEA entity.

The nail in the coffin for the WSP's argument that this was a DEA investigation, is shown in the record by the affidavit for search warrant in CP 46-63. This affidavit to conduct the search was submitted by West Net, without any mention of a DEA investigation or TNET. This affidavit clearly states the reason for the search, and by whom the search would be made. To further corroborate who is doing the investigation is shown in the TNET executive board meeting minutes from February 14 2007, which shows that TNET is assisting West Net on a raid, and specifically lists West Net and the Department of Defense, which turned out to be the Washington State National Guard. CP 429. If this was a DEA investigation by TNET, this would have been the place to show it. Another place to confirm if this was a DEA investigation would be the TNET arrest report for January 2007. CP 181. This document shows Worthington's arrest was a state case, and not a federal case.

WSP has never submitted any hard factual evidence that Worthington's arrest was a DEA investigation. The WSP is relying strictly on the hearsay declarations of WSP employee's, one of whom Fred Bjornberg states he "can't recall" CP 14-21. The only documents presented to show fact in this issue has been submitted by Worthington. The material evidence Worthington submitted to the Thurston County Superior court disputing that; this was a DEA investigation, that TNET was not a separate entity but an intergovernmental association, should have prevailed, and four of the five declarations used to support the Motion granting Summary Judgment should have been thrown out, and the Motion for Summary

Judgment should have been denied because it was not factually supported.

WSP's argument that Worthington's arrest was a DEA investigation, are unsupported, and terminally contradicted by Worthington's material evidence of documented fact. Another particular issue for the court to notice is the alleged regional drug task force agreement calls for the records to be kept by WSP, made available to the DEA upon request. CP 194 Other issues this court needs to consider are; that TNET and Tacoma Regional task force is one and the same, that TNET is not a DEA task force, that it is only an intergovernmental association, and the IAD provides an Investigative and administrative service for that intergovernmental association.

The fact is Gretchen Dolan was caught in a lie. She claimed WSP had no TNET Records, but WSP was found to have TNET records. Bjornberg and Braniff were also caught in a lie. They claimed that Worthington's arrest was a DEA investigation, but the record shows that West Net investigated Worthington for helping another man change his federal plea ,and for complaining to everyone about Roy Alloway enforcing federal laws over state medical marijuana laws. The Affidavit for the other person involved was more about Worthington than it was about the person for whom the affidavit was written for. The false statements by Dolan, Bjornberg, Braniff, and Wiley impeach any credibility as reliable witnesses, and should not have been allowed to support a Motion for Summary Judgment

The record will show that Worthington complained about medical marijuana plant limits, the use of FLIR thermal imaging, and the bypassing of the affirmative defense in the Washington State medical marijuana law. If all the exhibits

Worthington has submitted are reviewed de novo, this court will find evidence that Worthington sent in his complaints to CTED to get them to administer control over the Washington State drug task forces and counter drug programs. The record will show that CTED organized and solicited remarks from all of the drug task forces regarding Worthington's complaints and called him belittling and insulting. The record will show that Roy Alloway used information from CTED, which claimed Worthington was an employee of another individual in the initial affidavit obtained from the Kitsap County Superior Court. Then the record will show that two Washington State drug task forces and the Washington State Military Department were involved with Worthington's arrest for 6 medical marijuana plants, not DEA.

Looking at the evidence in this case, one could easily make the argument that this was a simply case of retaliation against a whistle blower, or a form of a SLAPP back action attempting to silence Worthington for the 2007 Washington State legislative session, where Worthington had threatened to go to ask the legislature to discontinue funding for the Multi jurisdictional drug task forces and counter drug programs. In fact, the contracting agency for West Net, Kitsap County has settled out of court for its part in this fiasco, and now TNET and its participating agencies are in cover up mode for their part in an obvious case of retaliation or SLAPP back and a violation of RCW'S 4.24.500 - 4.24.520.

This case is also about the attempt by the WSP to hide behind the DEA and FOIA, to avoid the Washington State Public Records Act. This has become common practice for Washington state law enforcement agencies that are caught enforcing federal marijuana laws over state medical marijuana laws, using

Washington State resources.

TNET was required to send copies of TNET executive board meeting minutes to WSP. Dolan tried to hide those reports completely by redacting an entire report, and claiming a state organized crime exemption on the same document which Rich Wiley claimed did not have any investigative information. Then Dolan withheld the February 14, 2007 TNET Executive Board meeting minutes, which were given to Worthington by another TNET participating agency that also claimed it too also worked for the DEA, claiming that the document was sent to them by the DEA.

Desperate to show this was a federal investigation, WSP conjured up a DEA investigation, in order to justify WSP's Fred Bjornberg enforcement of a federal law, and to hide WSP records regarding its participation in the SLAPP back against Worthington. The DEA that showed up with West Net and TNET, left Worthington's house after finding only 6 marijuana plants, because there was no hope of a federal charge or a DEA investigation, and any DEA investigation of Worthington left with them. The only law enforcement personnel that remained were state law enforcement personnel conducting a state investigation of a legal medical marijuana patient's home. That is the only material fact of Worthington's investigation. All the evidence Worthington has submitted supports his version of the facts.

The bottom line in this case is that WSP can not prove that there was a DEA investigation and needs the Appellant court to make the same mistake that the Trial court made, in accepting false written testimony over material fact. There is no DEA arrest warrant, no U.S. Attorney charges accusing Worthington of

illegal acts, and no federal court signing a federal affidavit. The only evidence that went before the Thurston County Superior court, and that is now before this court is a record of a Washington state arrest of John Worthington conducted by a Washington State drug task force West Net, with an affidavit signed by a Kitsap County Superior court, with a raid and warrant assist by TNET, and disclosed by TNET to be a state investigation, with ties to the Department of Defense, (Washington State National Guard) which assisted with aerial support.

CP 347-420 shows that raid and warrant request records are kept by the IAD.

The facts show that Fred Bjornberg was a WSP employee assigned to the IAD division to support the coordination of federal, state, and local law enforcement. The record shows that the IAD division of the WSP provides a service to both federal, state, county, and city drug task force participants. CP 347-420 Those Clerks papers show that Fred Bjornberg's individual records were used to create a TNET document for the TNET executive board. The record shows that the TNET interlocal agreement requires that these records be sent to each participating agency. The Record shows that Gretchen Dolan withheld those documents in an attempt to corroborate her story that Fred Bjornberg was contracted to a federal entity, and that TNET was a separate federal entity, which WSP had" no records for". However Worthington found that WSP did have TNET records, and some of those records were purposely concealed by Dolan and were sent to Worthington by another TNET participating agency after they thought the case had been dismissed. Worthington submitted those records for a motion to reconsider, and now those documents are on the record. Those records and previous records

submitted to the trial court by Worthington completely refuted the declarations made by WSP employees. Those declarations should have been found by the trial court to be false statements and not credible to support a Motion for Summary Judgment.

CONCLUSION

WSP's case relies heavily on Worthington's arrest being a DEA investigation, yet is bereft of any such proof. A reasonable preponderance of Worthington's evidence, should convince this court that recorded documented material facts should prevail over declarations of fact, and would properly support Worthington's claim that there was no DEA investigation .The original affidavit shows that Worthington's arrest was not centered on any federal charges whatsoever, and was served by West Net, with a raid warrant assist from TNET, and aerial support from the Washington State National Guard.

Therefore, the decisions by the trial court judge to allow false testimony to be used to support a motion for Summary Judgment, along with the trial courts failure to look at Worthington's evidence in a more favorable light ,should be cause to overturn the trial courts decision to grant WSP a Motion for summary Judgment. The trial court should not have tried to decide the truth of the matter, and should have let the matter proceed to trial, to determine which version of the facts were correct. WSP has not cited the proper case law to refute the U.S Supreme Court rulings involved with Anderson v Liberty lobby or the U.S. Ninth Circuit ruling on Hervey v Estes, and has failed to justify any ruling outside the scope of those rulings.

Worthington should prevail on this appeal, due to the fact that he has presented undisputed material facts of the record regarding the chain of events surrounding his arrest, and the fact that the trial court erred when it failed to accept those Material facts in favor of false declarations which where contradicted, and unsupported by anything other than more false declarations.

WSP is caught in an elaborate lie to cover up a state action to retaliate or SLAPP back, and seize medical marijuana under the guise of a federal entity in TNET, which according to the relevant case law in *Hervey v Estes*, only has standing as an inter governmental association, and does not have the required act of legislation to make it anything else other than an inter governmental association. The declarations used by WSP to help support their motion for Summary Judgment, were proven to be utterly false, and should not have been accepted by the trial court to support an order to grant a Motion for Summary Judgment. The Appellant court should correct the trial courts plain error, and reverse the decision of Thurston County Superior Court Judge Chris Wickham to grant a Motion for Summary Judgment.

REQUEST FOR RELIEF

Worthington respectfully asks that the Honorable Washington State court of Appeals in Division II remand this case back to the Thurston County Superior court, to reinstate Worthington's Public Disclosure request lawsuit at the earliest possible date, and reimburse Worthington for this appeal process.

RESPECTFULLY SUBMITTED this 2nd day of April 2009

Signed John Worthington

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CERTIFICATE OF SERVICE

Case No. 38697-6-II

Case No. 08-2-01410-7

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STATE OF WASHINGTON
BY DEPUTY

I declare under Laws of Perjury that on this 2nd day of April, 2009, I have sent a copy of the Plaintiff's Opening Brief to the Washington State Attorney General's office located at 800 Fifth Avenue, Suite 2000, SEATTLE WASHINGTON 98104-3188, via U.S. Mail

I, declare under Laws of perjury that the statements above are true.

Signature John Worthington Dated 4/2/09