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DIVISION II

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STATE OF WASHINGTON

BY
DEPUTY

NO. 40634-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

LARRY D. TYLER,

Appellant.

APPELLANT'S BRIEF

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A. Assignments of Error

Assignments of Error

1. The trial court erred when it denied the defendant's CrR 3.6 motion to suppress the evidence.

2. The trial court erred when it determined in its statement of facts:

“On February 11, 2009, Jefferson County Deputy Sheriff Brett Anglin, a ten-year veteran patrol officer, observed a vehicle traveling in an easterly direction on S.R. 104 just west of the Hood Canal Bridge which appeared to be speeding.”

3. The trial court erred when it determined in its statement of facts:

“Deputy Anglin pulled the vehicle over for speeding, and the driver stopped the vehicle approximately one foot outside of the fog line, on the paved shoulder. As he approached the vehicle, Anglin could see the driver was a male, that he had a male passenger, and that both were engaged in furtive movements suggestive of a person attempting to hide something.”

4. The trial court erred when it determined in its statement of facts;

“Anglin authorized him to give his cell phone to Bennett to make some calls for help, which were to no avail. Bennett was able to arrange a ride for himself, but not a driver for the vehicle.

5. The trial court erred when it determined in its statement of facts:

“While waiting for the tow truck to arrive, he and the back-up officer conducted a routine inventory search of the passenger compartment, which he testified was done pursuant to standard department policies to secure personal property and to protect the department and towing company.”

6. The trial court erred when it denied the defendant's motion to reconsider its decision denying the defense CrR 3.6 motion to suppress drug evidence.
7. The trial court erred when it denied the defendant's motion to reopen the case.
8. The defendant was denied his Fourth Amendment rights guaranteed by the United States Constitution.
9. The defendant was denied his Const. Art. 1, section 7 rights guaranteed by the Washington State Constitution.

Issues Pertaining to Assignments of Error

1. Whether the trial court erred when it denied the defendant's CrR 3.6 Motion to suppress the evidence where the arrestee did not consent to an inventory search? (Assignments of Error 1,5, 8 and 9.)
2. Whether the trial court erred when it denied the defendant's motion to reconsider its decision denying the motion to suppress drug evidence discovered during an inventory search of the vehicle the defendant was driving? (Assignments of Error 5,6, 8 and 9.)
3. Whether the trial court erred when it denied the defendants motion to reopen the case based on the discovery of an April 23, 2009 email authored by the same arresting officer of November 12, 2009?

The email advocated implementing police procedures within the

Jefferson County Police Department to “circumvent” the United States Supreme Court decision of April 21, 2009 in *Arizona v. Gant*, 556 U.S. ___, 129 S.Ct. 1710, 173 L. Ed.2d 485 (2009). (Assignments of Error 7,8, 9.)

4. Whether there was sufficient evidence to support the trial court’s determination of contested facts stated in its Memorandum Opinion and Order on Motion to Suppress Evidence? (Assignments of Error 2,3,4 and 5.)

B. Statement of Facts

Statement of Procedure

Larry Dean Tyler was charged in count I with Unlawful Possession of a Controlled Substance-methamphetamine contrary to RCW 69.50.4013(1). CP 2. Count II alleged Use of Drug Paraphernalia in violation of RCW 69.50.412(1). CP 2. Count III charged Driving While License Suspended or Revoked in the Third Degree pursuant to RCW 46.20.342(1)(c). CP 2. All three counts were alleged to have occurred on November 12, 2009. Id.

The defendant filed a CrR 3.6 motion to suppress the evidence. CP 6. An evidentiary hearing was conducted on January 8, 2010. Judge S. Brooke Taylor filed a Memorandum Opinion and Order on Motion to Suppress Evidence on January 21, 2010. CP 21. This order denied the defendant’s motion to suppress. CP 26.

The defendant then filed a motion to reconsider on January 29, 2010. CP 31. This was followed by a motion to reopen the CrR 3.6 hearing filed on February 3, 2010. CP 33. The motion to re-open was based on an email authored by Jefferson County Deputy Sheriff Anglin on April 23, 2009. He was the arresting officer in the case at bench.

The email concerned issues involved in the CrR 3.6 hearing, namely the United Supreme Court case of *Arizona v. Gant*, 556 U.S. ___, 129 S.Ct. 1710, 173 L. Ed.2d 485 (2009). The email stated in part:

“This unfortunate ruling [*Arizona v. Gant*] hinders our ability to continue the efforts that have been enforce for some time. The obvious way to circumvent this is impounding the vehicle and performing an inventory search. The problem with this is that we must afford the person the chance to contact someone else and determine if it is safely off of the roadway or not. It also obviously limits what we can search as well. The other way around this case and that is the use of a K-9.” CP 36. (See appendix.)

These motions were denied by a written Memorandum Opinion on February 19, 2010. CP 40 (filed 2/23/10.) Thereafter, Mr. Tyler was found guilty of Count I and Count III at a stipulated bench trial conducted on April 19, 2010 before the Honorable Judge Craddock. RP 59-60. He was found not guilty of Count II Possession of Drug Paraphernalia. RP 60. The bench trial was based on stipulated police reports. CP 43.

Tyler was sentenced on April 19, 2010. RP 60-2. Judgment and

sentence was then entered. RP 62; CP 63. Sentence was stayed pending appeal. RP 62; CP 75. A notice of appeal was filed on the same date. CP 76.

CrR 3.6 Hearing

Deputy Brett Anglin testified that he was a deputy sheriff for Jefferson County. RP 9. He was on duty on November 11, 2009 (sic). Id. While patrolling on Highway 104 he noticed a vehicle eastbound going 65 mph in a 60 mph zone. RP 10. A computer check revealed that the registered owner of the vehicle-a female- was suspended in the third degree. Id. Nevertheless, the vehicle was stopped for speeding about “a quarter of a mile from the Hood Canal Bridge.” id. The specific area the vehicle was stopped consisted of one lane in an eastbound direction and two lanes in a westbound direction. RP 11.

Upon being stopped the defendant, Larry Dean Tyler, produced a Medicare card “...and stated that he did not have a driver’s license.” id. The passenger was observed “trying to hide a beer can between his legs.” id. The deputy ran both names. The deputy testified to the results of his check: “ I received in the return that Mr. Tyler was suspended in the third degree, and I also received a return that the passenger was also suspended and had several outstanding warrants.” RP 12.

Tyler was arrested for DWLS 3rd degree, searched and placed in the

patrol car. id. A trooper arrived and dealt with the passenger. RP 13. The deputy asked Mr. Tyler for consent to search his motor vehicle. Tyler refused. id. The passenger was released because of confusion about whether his warrants were extraditable or not. The deputy called for an impound tow.¹ id

The deputy testified that he had the vehicle impounded because “It was less than a foot on a roadway that was a 60 mile an hour road next to a congested area, which was the Hood Canal Bridge...And also due to the fact that there was no driver on scene that could remove the vehicle within a timely manner.” RP 14. The passenger had possession of Mr. Tyler’s cell phone but was unable to locate anyone to drive the vehicle away. RP 14-15.

The deputy testified that he was impounding the vehicle “solely for the purpose of traffic safety.” RP 15. He did not impound the vehicle for the purposes of searching for an object he had seen when the passenger was attempting to hide something. RP 11. The deputy was able to identify that object as an “energy drink/alcohol” when he first approached the vehicle. RP 15.

¹ When asked why he called for an impound tow, the deputy responded: “To remove the vehicle from the roadway. It was the busiest part of our road and it was less than a food (sic) away from the fog line.” RP 13.

The deputy then inventoried the vehicle while he waited for the tow truck. RP 16. While conducting the “impounded inventory” the deputy discovered a blue metal container directly underneath the driver’s seat that contained “...a brown wad of cotton along with what appeared to be possibly heroin. Also, behind the seat were two amplifiers where the deputy “...could clearly see a piece of plastic, a Zip-loc container that had white powder in it that is consistent with methamphetamine.” RP 16.

On cross-examination the officer testified that the drugs were found in “...a round one inch container metal with a screw on the top ...Much like an Altoids container....” RP 20. This was screwed together “finger tight.”. id. ² The deputy testified that the reason for the extensive search was “it protects him from theft and it also protects us and the tow driver from accusations of theft.” RP 21.

The deputy elaborated with regard to the “stereo equipment.” He testified that they were not part of the vehicle but were “loose.” And “not secured to the vehicle.” RP 21.

On re-cross examination the deputy testified that before *Gant* an inventory search was called “search incident to arrest.” RP 23. He further

² On re-direct examination the deputy testified that the reason he opened the screw top container was in the event there “could have been possibly jewelry” “Or anything else that was of value.” RP 22.

testified that he did not know whether there was a state law about inventory searching. And he did not know whether Jefferson County Sheriff's Office had a policy on inventory searching or if it did he did not know what it stated.³ RP 24.

The trial court then inquired of the witness. By the court's examination it was determined that the subject vehicle was examined at roadside for damage. Any damage was recorded on an impound form. Also, the contents or inventory of the search of the vehicle are listed on a form. The inventory search is conducted at the scene. When the tow truck driver arrives, he or she is given the keys and signs the impound form and indicates that "everything in there is what I have recorded." RP 25-6; ex. 1 (impound and inventory record).

Examination of the officer continued about the inventory search procedure. Deputy Anglin testified that there were three options regarding impounding vehicles. RP 27-9. The deputy testified that he initiated the option of the passenger-at the driver's direction- calling someone to pick up the vehicle. RP 27. If someone was contacted- such as the owner- they

³ On re-redirect examination Deputy Anglin clarified: "There's likely a policy, yes. But would I know what it says or how it relates to an inventory search I honestly could not testify, I'd have to go get the policy and read it." RP 24.

were given a “...a reasonable amount of time, which is usually less than 30 minutes, the amount of time it would take a tow to get there, as well.” RP 28. The third option, besides having the vehicle towed, was to lock it and have the vehicle retrieved at a later time if roadway safety conditions allow. id.

Larry Dean Tyler’s Testimony

Larry Tyler testified that he was arrested “around noon” on November 12th. RP 30. After he exited his vehicle the deputy asked him if he could search his car. He testified; “I said no.” RP 31. After telling the officer that he would not consent to a search of his motor vehicle, the officer “...went and looked in the car...” id. He was then placed in the back of the patrol car. Id. He believed he was handcuffed. RP 32.

Tyler testified that there was no discussion about impounding his vehicle. Id. He testified that there was no discussion about whether he wanted the contents inventoried before the vehicle was impounded.

C. Argument

I. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT’S MOTION TO RE-OPEN THE CASE.

The defense motioned the trial court to reopen the case based on an email that was received by the defense after the CrR 3.6 hearing. The

email was received in response to a Public Records Act disclosure request that was made before the hearing. CP 33. That email- authored by the same deputy who testified at the CrR 3.6 hearing was dated April 23, 2009 and stated in pertinent part:

“This unfortunate ruling [*Arizona v. Gant*] hinders our ability to continue the efforts that have been enforce (sic) for some time. The obvious way to circumvent this is impounding the vehicle and performing an inventory search. The problem with this is that we must afford the person the chance to contact someone else and determine if it is safely off of the roadway or not. It also obviously limits what we can search as well. The other way around this case and that is the use of a K-9.” CP 36 (see appendix.)

The Jefferson County Superior Court showed little interest in Deputy Anglin’s 2009 email involving police procedures designed to “circumvent” the United States Supreme Court’s decision in *Arizona v. Gant*, 556 U.S. ___, 129 S.Ct. 1710, 173 L. Ed.2d 485 (2009). However, one test this court could apply would be whether the High Court itself would be interested in the Jefferson County Sheriff’s Office “obvious way to circumvent this.” CP 36. The Supreme Court stated in *Gant*:

“A rule that gives police the power to conduct such a search [*Belton*] whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment-

the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." (footnote omitted.)

129 S.Ct. 1720, referring to *New York v. Belton*, 453 U.S. 4554, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). *Belton* held that an officer may search the passenger compartment of an automobile and any containers therein when the search is contemporaneous with a lawful arrest of the occupant. The *Gant* court held that *Belton* did not authorize a vehicle search incident to a recent occupant's arrest after the arrested person has been secured and is incapable of accessing the interior of the vehicle. *Gant* and the case at bench are similar in that each defendant was arrested for driving with a suspended license. Each arrestee was then handcuffed, placed in a patrol car and then had his vehicle searched where illegal drugs were discovered.

The words often quoted from *State v. Montague*, 73 Wn.2d. 381, 385, 438 P.2d 571 (1968) echo from the past:

"Neither would this court have any hesitancy in suppressing evidence of crime found during the taking of the inventory, if we found that either the arrest or the impoundment of the vehicle was resorted to as a device and pretext for making a general exploratory search of the car without a search warrant."

Anglin testified under oath at the CrR 3.6 hearing that he was not aware of any policy involving the impounding and/ or inventory search of vehicles. RP 24. His sworn testimony included the following:

Redirect Examination

“BY MR. ASHCRAFT;

Q: Once you made the decision to impound the car what is the Sheriff’s Office policy and, actually, state law require you to do at that point?

A: An inventory search of the vehicle.

Q: Okay. Um, and is there any policy or anything requiring you to ask for consent of the driver to inventory the vehicle once you made that decision to impound?

A: Not that I’ve ever heard of.⁴ RP 22.

The trial court erred when it denied the defendant’s motion to reopen the CrR 3.6 hearing. It is within the discretion of the trial court to reopen a case for additional testimony after the parties have rested. *State v. Loftin*, 76 Wn.2d 350, 458 P.2d 29 (1969) (*State v. Harmon*, 21 Wn.2d 581, 592, 52 P.2d 314 (1944) (motion to re-open case to permit further testimony is within discretion of the trial court) (a trial court will be reversed if there is an abuse of discretion.).

See also, *United States v. Keller*, 523 F.2d 1009 (9th Cir. 1975) (refusal to allow defense to recall taxpayer to clarify expenditures and introduce other supporting documentary evidence which had just been discovered, constituted an abuse of discretion in prosecution for attempted

⁴ The date of this testimony was January 8, 2010; eight months after the deputy’s infamous email. Compare *State v. Williams*, 102 Wn.2d 733, 743, 689 P.2d 1065 (1984). ”Clearly, a defendant may reject this protection, [inventory search] preferring to take the chance that no loss will occur.” *infra* at 19, n.12.

income tax evasion.)

Defendant's Argument

The defense argued in its written motion to re-open:

“The email evidences a possible conspiracy to deprive citizens of their constitutional right to be free of unreasonable searches and seizures guaranteed under the Fourth Amendment of the United States Constitution and Article I, Section 22 of the Washington State Constitution. It certainly provides proof of Deputy Anglin’s predisposition to engage in the use of pretext in order to search a vehicle (under an exception to the warrant requirement) despite the lack of evidentiary basis for the search.” CP 33-35.⁵

The trial court stated in its Memorandum Opinion and Order on Motions to Reconsider and to Reopen the following;

“While the email statement by Deputy Anglin is concerning, to the extent that it could be construed as recommending vehicle impounds in every case where the driver is taken into custody, it is not a basis for reopening the instant case, for two reasons. First, the Court has found, and the Defendant admits, that the impound in this case was reasonable, and that finding was supported by the substantial

⁵ Compare Deputy Anglin’s email statement “This unfortunate ruling hinders our ability to continue the efforts that have been enforce for some time.” with the United States Supreme Court’s comment in *Gant*: “The fact that the law enforcement community may view the State’s version of the *Belton* rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected.” *Arizona v. Gant*, 129 S.Ct. at 1723.

evidence as the Court has previously noted, and to do an impound without doing an inventory would be inappropriate, if not foolish. Second, this arrest, impound and inventory took place prior to the publication of the Gant decision, so the ruling in Gant could not have been the motivation for this inventory search.” CP 41. (see appendix.)

Contrary to the trial court’s conclusion that the United States Supreme Court’s decision “could not have been the motivation for this inventory search”, it was the paramount motivation for the inventory search as disclosed by the chronology of events.

Arizona v. Gant was decided on April 21, 2009 according to the trial court’s own Memorandum Opinion.⁶ Deputy Anglin’s email was dated just two days later on “Thursday, April 23, 2009.” CP 36. Consequently, the deputy’s arrest, impound and inventory did not take place “prior to the publication of the Gant decision....” as the trial court determined. The arrest, impound and inventory in this case took place on November 12, 2009, which was six months after *Gant* and the deputy’s response. CP 2; CP 5, CP 9; CP 19 (impound and inventory record).

Obviously, the trial court erred in its conclusion that the arrest and

⁶ The trial court noted and stated in part: “The term “this” appears to be a reference to the U.S. Supreme Court’s decision in *Arizona v. Gant*. ___ U.S ___, 129 S.Ct. 1710 (2009), which was decided on April 21, 2009,” CP 40.

inventory took place prior to *Gant* in its written decision denying the motions for reconsideration and to reopen the CrR 3.6 hearing. One primary reason for the trial court's erroneous conclusion was based on the trial court's own Memorandum Opinion and Order on Motion to Suppress the Evidence filed on January 21, 2010. CP 21. In that memorandum the trial court erroneously states in its determination of FACTS :

“On February 11, 2009, Jefferson County Deputy Sheriff Brett Anglin, a ten-year veteran patrol officer, observed a vehicle traveling in an easterly direction on S.R. 104 just west of the Hood Canal Bridge which appeared to be speeding.” CP 21. (see appendix.)

The trial court is wrong about the date of this incident. The incident occurred on November 12, 2009 and not on February 11, 2009. This error affected the trial court's rulings.

Consequently, Deputy's Anglin's "circumvention" email of April 23rd, could have been the motivation for this inventory search in November 2009.⁷ The trial court abused its discretion or was in error when it stated: "For the reasons stated above, the Defendants' Motion for Reconsideration is denied, and the Defendant's Motion to Reopen is

⁷ Deputy Anglin was asked what his duties as a patrol officer entail during the CrR 3.6 hearing. He replied: "...traffic enforcement, as well as answering calls." RP 9. However, in his email of April 23, 2009 he disclosed: "As you know, I have always had an interest in the enforcement of drugs, etc." CP 36.

denied.” CP 41.

II. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT’S MOTION TO SUPPRESS THE EVIDENCE.

The trial court erred when it denied the defendant’s CrR 3.6 motion to suppress the evidence as a result of an alleged inventory search. The appellant’s basic argument is that this inventory search was a pretext for an evidentiary search and that was unlawful. RP 6.

The defendant also argued that because Mr. Tyler did not consent to a search of the vehicle, law enforcement may not conduct a search incident to an arrest by impounding the vehicle and then conducting an “inventory” in order to protect all the parties. CP 32. The defense implied that the search of the vehicle was not conducted in good faith. The trial court rejected these arguments and instead ruled :

“This Court is satisfied that the impound was reasonable and not a pretext for an exploratory search. The arresting officer had compelling reasons to impound the vehicle, and having done so, it was incumbent upon him to inventory its contents before turning it over to the tow truck driver.

The defendant contends that the blue container did not need to be opened as long as it was inventoried and received. This ignores the fact that it may have contained jewelry, money, or other small items with significant valuable (sic) which could be stolen.” CP 25.

An appellate court reviews conclusions of law entered by the a trial court at a suppression hearing de novo. Findings of fact are reviewed for

substantial evidence.⁸ *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008); *State v. Carter*, 151 Wn.2d 118, 125, 85 P.3d 887 (2004). “...the ultimate issue is whether under all the facts and circumstances of the particular case there were reasonable grounds for an impoundment.” *State v. Greenway*, 15 Wn.App. 216, 291, 547 P.2d 1231 (1976) (citing *State v. Bresolin*, 13 Wn.App. 386, 534 P.2d 1394 (1975)).

Generally, a warrantless search is presumed unreasonable pursuant to the Fourth Amendment of the United States Constitution and pursuant to Wash. Con. Art. 1, sec.7. *State v. Duncan*, 146 Wn.2d 166, 171-72, 43 P.3d 513 (2002). There are exceptions to this rule. The state bears the burden of proving that an exception to the warrant requirement is applicable to the case at bench. *Duncan*, 146 Wn.2d at 172; *State v. Vrieling*, 144 Wn.2d 489, 492, 28 P.3d 762 (2001). CP 14.

Notwithstanding that inventory searches after impoundment are an exception to the warrant requirement, there are limitations and criteria for impoundment that have been judicially imposed that were not followed in the case at bench. For instance, in *State v. White*, 135 Wn.2d 761, 766-7, 958 P.2d (1998) the scope of an inventory search is limited to those

⁸ The trial court entered a written Memorandum Opinion and Order on Motion to Suppress Evidence. CP 21. Compare CrR 3.6(b) entitled “Decision: The court shall state findings of fact and conclusions of law.”

areas necessary to fulfill its purpose. See also, Justice Charles W. Johnson, *Survey of Washington Search and Seizure Law: 2005 Update* 28 U of W L. Rev. 683 (2005).

Also, the search may not be a pretext for obtaining evidence that law enforcement would not have been able to otherwise obtain. Here, not one but two police officers searched the interior of the vehicle under the pretext of inventorying the vehicle's contents.⁹ CP 23; RP 13. From this combination of officers it is inferable that the search was conducted for investigatory reasons and was not conducted in good faith. *State v. Houser*, 95 Wn.2d 143, 154, 622 P.2d 1218 (1980). One officer's search may be to conduct a "routine" inventory search, but two officers searching a limited space is an exploratory search not conducted in good faith. (Good faith requirement is discussed in *State v. Gluck*, 83 Wn.2d 424, 518 P.2d 703 (1974); *State v. Singleton*, 9 Wn.App. 327, 511 P.2d 1396 (1973); *State v. Greenway, supra*; and *State v. Montague, supra*.)

Applying the above rulings stemming from *White* to the facts of this case, there was no need for deputy Anglin to unscrew the top of a one inch by one inch container to determine what its contents may be without a

⁹ The trial court found: "While waiting for the tow truck to arrive, he and the back-up officer conducted a routine inventory search of the passenger compartment." CP 23. The defense contests this mixed finding of fact and of law. (Assignment of error 5.)

search warrant.¹⁰ According to *State v. Houser*, supra, police officers may not open luggage located in an impounded vehicle absent consent or exigent circumstances.

Nor was there a need for one of the officers to slide the driver's seat forward. CP 23. It was slide forward in order to examine in detail two amplifiers located behind the seat. Id. Methamphetamine residue was then discovered inside a small zip lock plastic bag located on the floor behind the driver's seat after sliding the seat forward. CP 23, 59; RP 16, 21.

It was clear from the testimony at the hearing that Mr. Tyler did not give officer Anglin consent to search the vehicle. RP 31.¹¹ The defense argued that without consent the police could not conduct an inventory search of an impounded vehicle citing *State v. Williams*, 102 Wn.2d 733, 743, 689 P.2d 1065 (1984).¹²

¹⁰ According to the laboratory report this container held a fiber wad with dark brown residue that was found to contain Heroin. CP 59.

¹¹ Mr. Tyler was asked: "Q: Do you remember exactly what he asked you? A: Uh, he asked me if he could search the car. Q: And what did you say? A: I said no."

¹² *Williams* was quoted as follows in the defendant's argument:

"However, even if impoundment had been authorized, it is doubtful that the police could have conducted a routine inventory search without asking petitioner if he wanted one done. The purpose of an inventory search is to protect the police from lawsuits arising from mis-

III. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT’S MOTION FOR RECONSIDERATION.

After the trial court’s decision was rendered by written memorandum the defense filed a motion for reconsideration. CP 31. The defense stated, as part of its motion, that the impound may have been reasonable but that the search of the vehicle was not reasonable. The pretextual search was unreasonable because Mr. Tyler had not consented to a search. CP 32. The defense argued in its motion:

“Again, the issue is whether, given Mr. Tyler’s decision not to authorize Deputy Anglin to search the vehicle, he can do it anyway by calling it “inventory” of the vehicle’s contents.” CP 32.

Inventory searches must be conducted in good faith. An inventory search following a lawful impoundment-without first obtaining a search warrant-must be conducted in good faith. *State v. Greenway*, 15 Wn.App. at 218 and cases cited therein.

Also argued was the assertion that the search was conducted, as stated in the trial court’s memorandum opinion, “pursuant to standard department policies”. The defense argued on the issue of good faith:

handling of personal property of a defendant. Clearly, a defendant may reject this protection, preferring to take the chance that no loss will occur. *See generally United States v. Lyons*, 706 F.2d 321, 335 n.23 (1983).” CP 7.

“Officer Anglin may have testified that the search was done “pursuant to standard department policies” (Memorandum Opinion, p.3); however, he also testified on cross examination that he had never read the policy, and didn’t know what it required.” CP 32.¹³

Abuse of Discretion

The trial court abused its discretion or was in error when it stated:

“For the reasons stated above, the Defendants’ Motion for Reconsideration is denied, and the Defendant’s Motion to Reopen is denied.” CP 41.

“Motions for reconsideration are addressed to the sound discretion of the trial court. *State v. Scott*, 92 Wn.2d 209, 595 P.2d 549 (1979); CR 60 (b).”

State v. Holland, 30 Wn.App. 366, 375, 635 P.2d 142 (1981), *affirmed*, 98 Wn.2d 507, 656 P.2d 1056 (1983).

According to *State ex. rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971):

“Where the decision of the trial court is a matter of discretion, it will not be disturbed on review except on clear showing of abuse of discretion. That is discretion manifestly unreasonable or exercised on untenable grounds or for untenable reasons.”

¹³ The deputy was asked: “Q: Okay. And you don’t know if there is a Jefferson County Sheriff’s Office policy on inventory searching, uh, and if there is you don’t know what it says, right? A: That is correct.” RP 24.

Compare April 23, 2009 email: “This unfortunate ruling hinds our ability to continue the efforts that have been enforce for some time.” CP 36.

The trial court abused its discretion because it erroneously determined that the arrest, impoundment and inventory was conducted on February 11, 2009; whereas the actual date of the incident was nine months later on November 12, 2009. CP 2, 5. This foundational error most likely affected the trial court's initial ruling denying suppression of the evidence and affected its decision not to reconsider its suppression decision. If the trial court would have reexamined its suppression decision and its memorandum it would have discovered the colossal mistake it made with the important dates of February, April and November 2009 as they related to this incident.

IV. THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S STATEMENT OF FACTS.

The trial court entered the following "FACTS" in its written Memorandum Opinion and Order on Motion to Suppress Evidence. CP 21:

"On February 11, 2009, Jefferson County Deputy Sheriff Brett Anglin, a ten-year veteran patrol officer, observed a vehicle traveling in an easterly direction on S.R. 104 just west of the Hood Canal Bridge which appeared to be speeding." CP 21 and

" Deputy Anglin pulled the vehicle over for speeding, and the driver stopped the vehicle approximately one foot outside of the fog line, on the paved shoulder. As he approached the vehicle, Anglin could see the driver was a male, that he had a male passenger, and that both were

engaged in furtive movements suggestive of a person attempting to hide something.” CP 22 and

“Anglin authorized him to give his cell phone to Bennett to make some calls for help, which were to no avail. Bennett was able to arrange a ride for himself, but not a driver for the vehicle. CP 22 and,

“While waiting for the tow truck to arrive, he and the back-up officer conducted a routine inventory search of the passenger compartment, which he testified was done pursuant to standard department policies to secure personal property and to protect the department and towing company.”¹⁴ CP 23.

The standard of review is the substantial evidence standard.

According to *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999):

“We review findings of fact on a motion to suppress under the substantial evidence standard. *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *id.* at 644. We review conclusions of law in an order pertaining to suppression of evidence de novo. *State v. Johnson*, 128 Wn.2d 431,443, 909 P.2d 293 (1996).”

There was not substantial evidence that “ “On February 11, 2009, Jefferson County Deputy Sheriff Brett Anglin....observed a vehicle traveling in an easterly direction on S.R. 104 just west of the Hood Canal Bridge which appeared to be speeding.” CP 21. As shown above and as shown by the record, this incident occurred on November 12, 2009. CP

¹⁴ This assignment of error is discussed under section II of the appellant’s brief, supra at pp 16-19.

5 (Jefferson County Sheriff's report.). See also, three counts in the information that alleged the incident date as "...On or about the 12th day of November, 2009...." CP 2; Count I, Count II, Count III.

" A trial court's erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal. *State v. Hill*, 123 Wn.2d at 647.

There was not substantial evidence that '...the driver stopped the vehicle approximately one foot outside of the fog line, on the paved shoulder...." CP 22. Larry Tyler testified that when he pulled over he tried to "pull off as far as I could so that there was plenty of room for cars to go by." RP 32. He stated that he pulled over "A couple, two or three feet" from the fog line. id.¹⁵

Deputy Anglin testified that he impounded the vehicle, in part, because "It was less than a foot on a roadway that was a 60 mile an hour road next to a congested area, which was the Hood Canal Bridge, and one of our most congested intersections, which is Paradise Bay Rd...." RP 14. Previously the deputy testified; "It's a single lane and I believe right there it's transitioning from 60 to 40 miles an hour." RP 11. The deputy testified that he impounded the vehicle "...to remove it to make the

¹⁵ "Q: So how far away over the fog line were you able to get your car? A: A couple, two or three feet," RP 32.

roadway safer.” RP 14.

There was no testimony that Deputy Anglin had to stand on the passenger side of the vehicle in order to avoid being struck by traffic that he estimated to be travelling at 60 miles per hour. A fair-minded rational person would believe that Mr. Tyler’s vehicle was safely off the roadway, was not a hazard to traffic and was on the inside of the fog line.

In *State v. Bales*, 15 Wn. App. 834, 552 P.2d 688 (1976) the Court of Appeals affirmed the trial court’s suppression of the evidence. The trial court determined that an impoundment based on the stopped vehicle being parked in a prohibited zone did not provide a reasonable basis to impound the vehicle. The court stated in part: “Although his vehicle was illegally parked, it could have easily been moved a short distance to a legal parking area and temporarily secured against theft. *People v. Nagel*, 17 Cal.App. 3d 492, 95 Cal.Rptr. 129 (1971). *See* 27 Okla. L .Rev. 693 (1974).” (Compare RCW 46.55.113) (see appendix.)

The trial court also found that as deputy Anglin approached the vehicle both passengers “...were engaged in furtive movements suggestive of a person attempting to hide something.” CP 22. Deputy Anglin only testified that the passenger was “trying to hide a beer can between his legs. RP 11. The deputy testified:

“Q. Okay. Um, once you made con – you said you

had stopped the car. What was the next thing that occurred?

A: As I was approaching the car I can tell that the passenger was attempting to hide something from me. I couldn't tell exactly what it was. And when I approached and contacted Mr. Tyler as the driver I could tell that he was trying to hide a beer can between his legs, the passenger was." RP 11.

There was no testimony that the driver, Larry D. Tyler acted furtively or attempted to conceal or hide anything.

Next, the trial court determined that Deputy Anglin authorized Tyler to give his cell phone to his passenger in order to make some calls for a driver.¹⁶ CP 22. However, Mr. Tyler testified there was no discussion about whether there was someone that could come and pick up his vehicle. RP 33. Tyler also testified that the deputy asked him if the passenger could use his cell phone "for the purpose of getting a ride home." id. He gave his cell phone to the officer. RP 37.

The trial court's Memorandum Opinion was not supported by substantial evidence. CP 21-3.

D. Conclusion

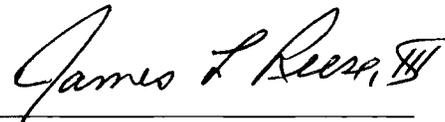
This court should reverse Mr. Tyler's conviction. In the alternative

¹⁶ Compare Deputy Anglin's email of April 23, 2009, which states in part: "The problem with this [*Arizona v. Gant*] is that we must afford the person the chance to contact someone else and determine if it is safely off of the roadway or not." CP 36.

this court should remand the case to the trial court in order to reopen the
CrR 3.6 hearing based on the contents of the April 23rd, 2009 email.

Dated this 10th day of September 2010.

Respectfully Submitted,

A handwritten signature in cursive script that reads "James L. Reese, III". The signature is written in black ink and is positioned above a horizontal line.

James L. Reese, III
WSBA #7806
Court Appointed Attorney
for Appellant

From: "Brett Anglin" <banglin@co.jefferson.wa.us>
To: "Ben Stamper" <bstamper@co.jefferson.wa.us>; "Mike Stringer" <mstringer@co.jefferson.wa.us>;
"Andy Pernsteiner" <apernsteiner@co.jefferson.wa.us>
Cc: "Anthony Hernandez" <ahernandez@co.jefferson.wa.us>
Sent: Thursday, April 23, 2009 8:03 PM
Subject: RE: Search incident to arrest

Sir's,

This unfortunate ruling hinders our ability to continue the efforts that have been enforce for some time. The obvious way to circumvent this is impounding the vehicle and performing an inventory search. The problem with this is that we must afford the person the chance to contact someone else and determine if it is safely off of the roadway or not. It also obviously limits what we can search as well. The other way around this case and that is the use of a K-9.

I understand that Scott will be attending the narcotic school for K-9's in the coming months, which will be a huge tool to combat the methamphetamine proliferation (a little George B there) that has consumed Hadlock and the surrounding communities for some time. If used appropriately, and in a Deputies hands that is available to use it, I believe that this ruling will have little effect....

The obvious problem is that Scott is just one Deputy. He will be off three days out of the week and working only 10 hours a day, plus vacations. I understand that budgeting is a concern, however I believe that implementing an additional K-9 would have little cost and many rewards.

The training to attend the school which would include a dog is \$1500.00. Through various contacts though the community I am confident that I can obtain this money, and the maintenance money (food etc) from business leaders and or possibly though the drug fund. Obviously the cost to the department would be a lost Deputy for 6 weeks (one week break between) and 14 hours a month OT. The OT hours per month could be mitigated by a schedule change when there is adequate coverage. Or possibly a combination of the two.

We still have a half cage at the county shop that could be outfitted to work. The cage could be outfitted to fold to a full cage when there is no need to transport a suspect.

As you know, I have always had an interest in the enforcement of drugs etc. This program is relatively low cost and if found too cumbersome, it could be terminated at any time. It also allows a back up in the event that one of the dogs (or Deputies) becomes sick or injured.

The next class at DOC is not until January 2010. I will by no means have my feelings hurt if your decide that this is not in the best interest of JCISO and the citizens of Jeffco!

Respectfully submitted,

Brett Anglin

A

From: Ben Stamper
Sent: Thursday, April 23, 2009 7:56 AM
To: Adam Newman; Alex Mintz; Anita Hicklin-Reserve Officer; Barb Garrett; Brett Anglin; Brian Anderson; Brian

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SUPERIOR COURT OF WASHINGTON
COUNTY OF JEFFERSON

JEFFERSON COUNTY
RUTH GORDON, CLERK

STATE OF WASHINGTON,)
Plaintiff,)
vs.)
LARRY DEAN TYLER,)
Defendant.)

NO. 09-1-00197-4

MEMORANDUM OPINION
AND ORDER ON MOTION
TO SUPPRESS EVIDENCE

I. MOTION:

Defendant Tyler moves under CrR 3.6 to suppress evidence found in the vehicle he was driving when arrested on February 11, 2009. Defendant contends that the impoundment and inventory search of the vehicle was an impermissible search by virtue of the U.S. Supreme Court's recent decision in Arizona v. Gant, ___ U.S. ___, 129 S. Ct. 1710 (2009).

The State responds that the impound was proper per statute, and a necessary exception to the prohibition against warrantless searches.

II. FACTS:

On February 11, 2009, Jefferson County Deputy Sheriff Brett Anglin, a ten-year veteran patrol officer, observed a vehicle traveling in an easterly direction on S.R. 104 just west of the Hood Canal Bridge which appeared to be speeding. He turned around and clocked the vehicle at 65 m.p.h. in a 60 m.p.h. zone. A license plate check disclosed that the registered owner of the vehicle was a female whose license was suspended.

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Deputy Anglin pulled the vehicle over for speeding, and the driver stopped the vehicle approximately one foot outside of the fog line, on the paved shoulder. As he approached the vehicle, Anglin could see the driver was a male, that he had a male passenger, and that both were engaged in furtive movements suggestive of a person attempting to hide something.

The driver had no license, but produced a medical card identifying him as Larry Dean Tyler. The passenger was identified verbally as Jeffery N. Bennett. A check with dispatch revealed both had suspended licenses. Anglin arrested Tyler for DWLS, patted him down for weapons, placed him in handcuffs and sat him in the backseat of his patrol car. While he was doing this, the officer he had called for "back-up" arrived and took Bennett into custody for outstanding warrants, after determining that he had been trying to hide an open alcoholic beverage can between his legs. The "outstanding warrants" ultimately were not confirmed, and Bennett was released at the scene.

At some time during this process, the exact timing of which is not clear, Anglin asked for permission to search the vehicle, which was denied by both occupants. Tyler, who appeared very nervous, informed the arresting officer that his girlfriend, Cheryl A. King, who owned the vehicle, could not be called to retrieve it because she was in jail in Clallam County. Anglin authorized him to give his cell phone to Bennett to make some calls for help, which were to no avail. Bennett was able to arrange a ride for himself, but not a driver for the vehicle.

With the vehicle parked on the shoulder of a busy highway, and nobody available to drive it away, Deputy Anglin decided to impound it and called a private

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3 towing company. While waiting for the tow truck to arrive, he and the back-up officer
4 conducted a routine inventory search of the passenger compartment, which he testified
5 was done pursuant to standard department policies to secure personal property and to
6 protect the department and towing company. In his testimony, Deputy Anglin
7 contended that the impound and removal of the vehicle was essential for traffic safety
8 reasons.
9

10 In the course of the inventory search the officers found a small, round, blue
11 metal container under the driver's seat which revealed a small quantity of
12 methamphetamine when the lid was screwed off. They also found a small package of
13 methamphetamine powder on the floor behind the driver's seat after sliding the seat
14 forward. It is this evidence which the defendant seeks to suppress.
15

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17 III. ANALYSIS:

18 The recent decision in Gant greatly restricted the scope of searches of a vehicle
19 incident to the arrest of its driver, other than a search for evidence of the crime for
20 which the driver is being arrested, and even that will usually require the obtaining of a
21 search warrant once the driver is safely secured in the back of a patrol car.
22

23 But this new restriction does not erase the narrow exceptions which allow a
24 warrantless search under certain circumstances. As the Gant court said at 129 S. Ct.
25 1710, 1723-24:

26 Police may search a vehicle incident to a recent
27 occupant's arrest only if the arrestee is within reaching
28 distance of the passenger compartment at the time of the
search or it is reasonable to believe the vehicle contains

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evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable *unless* police obtain a warrant *or show that another exception to the warrant requirement applies.* (emphasis added).

Inventory searches after impoundment are a recognized exception to the prohibition against warrantless searches. State v. Simpson, 95 Wn. 2d 170, 622 P. 2d 1199 (1980). RCW 46.55.113 specifically authorizes impoundment after an arrest for several enumerated traffic offenses, including Driving While License Suspended, at the discretion of the arresting officer. But, if there is a sober licensed driver available, the exercise of discretion and impoundment will be appropriate only where there is no reasonable alternative. State v. Peterson, 92 Wn. App. 899, 964 P. 2d 1231 (1998). In Peterson the facts were very similar to the instant case: the driver had a suspended license, the owner was not available to retrieve the vehicle or authorize someone else to do so, and leaving the car along side the road did not provide adequate protection for the law enforcement agency authorizing the impound, nor did it adequately provide for traffic safety.

Deputy Anglin opined that it was simply not safe to leave the vehicle parked along a busy highway, just one foot outside the fog line. As a life-time resident of the North Olympic Peninsula, who has driven this stretch of road hundreds of times, this Court can take judicial notice of the following facts: SR 104 is busy and congested at this location as vehicles decelerate to approach the bridge; the intersection at the west end of the bridge is a frequent accident scene; and cars are accelerating and passing each other as they leave the bridge and proceed west on the two lanes provided for

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westbound traffic. It is not a safe place to leave an abandoned vehicle, adding to the congestion and restricted sight lines, and making the vehicle vulnerable to vandalism and theft.

The defendant is correct in asserting that impoundment cannot be a pretext for an explanatory search. State v. Montagne, 73 Wn. 2d 381, 438 P. 2de 571 (1968). "The determinative test, therefore, of the legality of the search is its reasonableness under all of the circumstances." Id. At 389. Here, the defendant's concern is understandably aroused by the fact that the arresting officer sought, and was denied, permission to search, and stated in his testimony that the furtive acts by both occupants made him worried about the availability of weapons. However, with the weapons issue resolved by the removal of both occupants from the vehicle, there was no reason for a general, exploratory search. Any evidence of using the impound as a pretext for a warrantless search is rebutted by the officer's offer to let the passenger call for help, once he knew the owner was in jail and not available to assist to retrieve her vehicle.

The Court is satisfied that the impound was reasonable and not a pretext for an exploratory search. The arresting officer had compelling reasons to impound the vehicle, and having done so, it was incumbent upon him to inventory its content before turning it over to the tow truck driver.

The defendant contends that the blue container did not need to be opened as long as it was inventoried and received. This ignores the fact that it may have contained jewelry, money, or other small items with significant valuable which could be stolen.

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IV. DECISION:

The Court rules that the impound and inventory search were reasonable under all of the circumstances, and the Motion to Suppress is therefore denied.

DATED this 20th day of JAN., 2010.

Respectfully submitted,



S. BROOKE TAYLOR
JUDGE

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**SUPERIOR COURT OF WASHINGTON
COUNTY OF JEFFERSON**

FILED

10 FEB 23 AM 10:36

JEFFERSON COUNTY
RUTH GORDON, CLERK

STATE OF WASHINGTON,)
Plaintiff,)
vs.)
LARRY DEAN TYLER,)
Defendant.)

NO. 09-1-00197-4

MEMORANDUM OPINION
AND ORDER ON MOTIONS
TO RECONSIDER AND TO
REOPEN

I. MOTION:

Defendant Tyler filed a Motion to Reconsider on January 29, 2010, and a Motion to Reopen 3.6 Hearing on February 3, 2010. The latter was based in significant part upon an email from Deputy Brett Anglin dated April 23, 2009, in which he made the following statement: "The obvious way to circumvent this in impounding the vehicle and performing an inventory search." The term "this" appears to be a reference to the U.S. Supreme Court's decision in Arizona v. Gant, ___ U.S. ___, 129 S.Ct. 1710 (2009), which was decided on April 21, 2009.

II. ANALYSIS:

In both motions, the Defendant admits that the impound of the Defendant's vehicle was reasonable and that is the determination which is dispositive in this matter. If the impound is reasonable, under all of the circumstances, which the Court found to be the case, and the Defendant admits, then Deputy Anglin had no alternative but to conduct an inventory search to protect himself, his department, and the towing company against a possible future claim that items of personal property were removed from the

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vehicle at or during impound. To impound a vehicle, and then fail to conduct an inventory of its contents because the vehicle operator (in this case, not the owner) denies permission to search, would not only be contrary to department policy, but would expose the Department to future claims needlessly.

While the email statement by Deputy Anglin is concerning, to the extent that it could be construed as recommending vehicle impounds in every case where the driver is taken into custody, it is not a basis for reopening the instant case, for two reasons. First, the Court has found, and the Defendant admits, that the impound in this case was reasonable, and that finding was supported by substantial evidence as the Court has previously noted, and to do an impound without doing an inventory would be inappropriate, if not foolish. Second, this arrest, impound and inventory took place prior to the publication of the Gant decision, so the ruling in Gant could not have been the motivation for this inventory search.

III. DECISION:

For the reasons stated above, the Defendant's Motion for Reconsideration is denied, and the Defendant's Motion to Reopen is denied.

DATED this 19th day of FEB., 2010.

Respectfully submitted,



S. BROOKE TAYLOR
JUDGE

RCW 46.55.113

Removal by police officer. (Effective until July 1, 2011.)

(1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.002, 46.61.004, 46.20.042, or 46.20.043, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.002, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.16.381 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.042, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.05.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

[2007 c 242 § 1; 2007 c 86 § 1; 2005 c 390 § 5. Prior: 2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.03.001.]

Notes:

Reviser's note: This section was amended by 2007 c 86 § 1 and by 2007 c 242 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.028(2). For rule of construction, see RCW 1.12.028(1).

Finding -- 1998 c 203: See note following RCW 46.55.100.

Short title -- Effective date -- 1994 c 275: See notes following RCW 46.04.010.

RCW 46.55.113

Removal by police officer. (Effective July 1, 2011.)

FILED
COURT OF APPEALS
DIVISION II

10 SEP 10 PM 1:04

STATE OF WASHINGTON
BY
DEPUTY

PROOF OF SERVICE

STATE OF WASHINGTON)
COUNTY OF KITSAP)

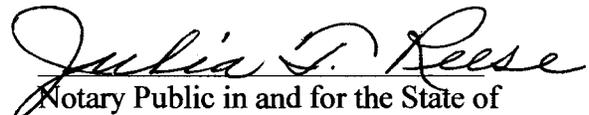
James L. Reese, III, being first duly sworn on oath, deposes and says:

That he is a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

That on the 10th day of September, 2010, he deposited in the mails of the United States of America, postage prepaid, the original and one (1) copy of Appellant's Brief in State of Washington v. Larry D. Tyler, No. 40634-9-II for filing to the office of David Ponzoha, Clerk, Court of Appeals, Division Two, 950 Broadway, Ste. 300, Tacoma, WA 98402-4454; mailed one (1) copy of the same to the office of Jefferson County Prosecuting Attorney, P.O. Box 1220, Port Townsend, WA 98368-1220; and deposited in the mails of the United States of America, postage prepaid, one (1) copy of the same to Appellant at his last known address; Larry D. Tyler, 1305 East 1st Street, Apt. #8, Port Angeles, WA 98362.



Signed and Attested to before me this 10th day of September, 2010 by James L. Reese, III.


Notary Public in and for the State of
Washington residing at Port Orchard.
My Appointment Expires: 4/04/13