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WAHKIAKUM COUNTY, WA
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No. 48340-8-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
RESPONDENT

V.

DERRICK UNBEWUST
APPELLANT

FILED
COURT OF APPEALS
DIVISION II
2016 OCT 25 AM 9:47
STATE OF WASHINGTON
BY _____ DEPUTY

ON APPEAL FROM THE
SUPERIOR COURT OF WAHKIAKUM COUNTY

BEFORE
THE HONORABLE, FABION, JUDGE
OPENING BRIEF OF APPELLANT

DERRICK UNBEWUST #113556
ISCI
PO BOX 14
BOISE, ID 83707

DERRICK UNBEWUST
PRO SE, APPELLANT

From:Wahkiakum Superior Court 3607958813 10/25/2016 09:49 #566 P.001/017

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ASSIGNMENTS OF ERROR

① THE STATE FAILED TO SHOW REASONABLE CAUSE FOR WARRANT/SEIZURE

② SEARCH WARRANT WAS FOR METHAMPHETIMINE ONLY/SPECIFICLY NOT CHECKS, PRINTERS, OR IDENTIFICATION CARD'S

③ THE STATE FAILED TO SHOW RESONING FOR A EXCEPTIONAL SENTENCE.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

① I WAS PULLED OVER FOR DEFECTIVE HEADLIGHT THAT I AM 100% SURE WAS WORKING JUST FINE, THERE WAS NO CRIMINAL ACTIVITY PRESENTLY BEING COMMITTED OR ABOUT TO BE COMMITED

② THEY GOT A WARRANT FOR METHAMPHETIMINE UNDER ILLEGAL PRETENSES, AND SEIZED CHECKS, PRINTERS, AND

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OTHER ALLEGED IDENTITY THEFT MATERIAL

③ DID STATE SHOW VALID REASONING, AGRAVATORS OR MITIGATING FACTORS TO IMPOSE A EXCEPTION SENTENCE.

STATEMENT OF THE CASE

ON NOVEMBER 26, 2013, IN WAHKIAKUM COUNTY AT APPROXIMATLY 113 PM ON SR4, WASHINGTON STATE TROOPER MALOMBER STOPPED THE VEHICLE MR UNBEWUST WAS DRIVING FOR A DEFECTIVE HEADLIGHT. NO OTHER SUSPICIOUS ACTIVITY SUPPORTED THE STOP OF SAID VEHICLE.

AS THE SEIZURE PROGRESSED, TROOPER MALOMBER REPORTED THAT, AMON THINGS, HE BECAME SUSPICIOUS THAT MR UNBEWUST WAS DRIVING IMPAIRED. MR UNBEWUST AGREED TO PERFORM STANDARDIZED FIELD SOBRIETY TESTS. HE SHOWED NO SIGNS OF NYSTAGMUS, BUT DID SHOW SOME SIGNS OF NOT BEING ABLE TO BALANCE DURING OTHER TESTS. HE PROVIDED A P.B.T SAMPLE OF .00 HE APPARANTLY STATED TO ONE OF

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THE TROOPERS THAT HE HAD CONSUMED MARIJANA "4-5" HOURS BEFORE.

TROOPER MACOMBER PLACED MR. UNBEWUST, WHO HAD IDENTIFIED HIMSELF AS STEVE HACKETT, UNDER ARREST FOR D.U.I WHEN MR UNBEWUST WAS SEARCHED, A PACKAGE WITH A SMALL AMOUNT OF WHAT APPEARED TO BE METHAMPHETIMINE WAS LOCATED ON HIS PERSON, AS WELL AS A CHECK ISSUED TO ANOTHER PERSON.

JUDGE FAUBION ISSUED A WARRANT PERMITTING WITHDRAWL OF BLOOD, AS WELL AS A SEARCH OF VEHICLE

ADDITIONAL CONTRABAND WAS DISCOVERED IN THE VEHICLE WHICH LED TO NUMEROUS CHARGES. IT IS THE UNDERSIGNED'S BELIEF THAT THE FACTS OF THIS CASE PRESENT A VALID ISSUE CONCERNING THE VALIDITY OF MR. UNBEWUST'S ARREST

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AND THE SEARCH OF HIS VEHICLE

ARGUMENT

AS A GENRAL RULE, WARRANTLESS SEARCHES AND SEIZURES ARE PER SE UNREASONABLE. STATE V. ROSS, 4P. 3d 130, 141 WN 2d 304 (2000). THE STATE CARRIES THE BURDEN OF SHOWING THAT THE PARTICULAR SEARCH OR SEIZURE IN QUESTION FALLS WITHIN AN EXCEPTION TO THE WARRANT REQUIRMENT. TO JUSTIFY AN INVESTIGATORY STOP, THE OFFICER MUST HAVE A REASONABLE ARTICULABLE SUSPICION, BASED ON OBJECTIVE FACTS, THAT THE PERSON SEIZED HAS COMMITED OR IS ABOUT TO COMMIT A CRIME. USCA CONST. AMEND. 4; RCWA CONST. ART 1 SEC 7.

WHEN AN UNCONSTITUTIONAL SEARCH OR SEIZURE OCCURS, ALL SUBSEQUENTLY UNCOVERED EVIDENCE BECOMES FRUIT OF THE POISIONESS TREE AND MUST BE SUPPRESSED. STATE V. LADSON, 138 WASH 2d 343, 359, 979 P. 2d 833 (1999). THE REASONABLENESS

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OF SUCH A DETENTION DEPENDS" ON A BALANCE BETWEEN THE PUBLIC INTEREST AND THE INDIVIDUALS RIGHT TO PERSONAL SECURITY FREE FROM ARBITRARY INTERFERENCE BY LAW OFFICERS". UNITED STATES V BRIGNONI-PONCE, 422 US. 873, 878, 95 S.Ct. 2574, 2578, 45 L. ED. 2d 607 (1975) (CITATION OMITED); ACCORD BROWN V TEXAS, 443 U.S. 47, 99 S.Ct, 2637, 61 L ED. 2d 357 (1979). A SEIZURE IS REPSONABLE IF THE STATE CAN POINT TO "SPECIFIC AND ARTICULABLE FACTS GIVING RISE TO A REASONABLE SUSPICION THAT THE PERSON STOPPED IS, OR IS ABOUT TO BE, ENGAGED IN CRIMINAL ACTIVITY". STATE V. GLEASON, 70 WASH. APP 13, 17, 851 P.2d 731 (1993) (CITING TERRY, 392 US. AT 21-22, 88 S.Ct AT 1879-1881); ACCORD UNITED STATES V CORTEZ, 449 U.S. 411, 417, 101 S.Ct 690, 694, 66 L ED. 2d 621 (1981); STATE V. GARCIA, 125 WASH 2d 239, 242, 883 P.2d 1369 (1994). GENRALLY, UNDER THE 4TH

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AMENDMENT, A POLICE OFFICER'S SEIZURE OF EITHER EVIDENCE OF A CRIME IN A CONSTITUTIONALLY PROTECTED AREA OR SEIZURE OF A CRIME SUSPECT MUST BE SUPPORTED BY A JUDICIAL WARRANT BASED ON PROBABLE CAUSE. A WARRANTLESS SEIZURE IS THEREFORE PRESUMED UNREASONABLE UNDER THE 4TH AMENDMENT. NEVERTHELESS, IT IS ALSO WELL-SETTLED THAT THIS PRESUMPTION OF UNREASONABLENESS MAY BE REBUTTED BY A SHOWING THAT A SPECIFIC EXCEPTION TO THE WARRANT REQUIRMENT APPLIES IN THE CASE UNDER CONSIDERATION. THE STATE BEARS THE BURDEN OF SHOWING A SEIZURE WITHOUT A WARRANT FALLS WITHIN ONE OF THESE EXCEPTIONS. STATE V. ACREY, 148 WN 2d 738, 745-746, 63 P. 3d 594 (2003). FOR A PERMISSIBLE INVESTIGATORY DETENTION, THE OFFICER MUST HAVE A REASONABLE AND ARTICULABLE SUSPICION OF A "SUBSTANTIAL POSSIBILITY" THAT A CRIME HAS OCCURED OR IS ABOUT

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TO OCCUR. USCA CONST. AMEND. 4; RCWA CONST ART 1 SEC 7; STATE V. DUNCAN, 146 WASH. 2d 166, 179, 43 P 3d 513 (2002).

THERE IS NO REASON TO BELEIVE THAT THE OCCUPANTS OF THIS VEHICLE WERE INVOLVED IN ANY CRIMINAL ACTIVITY. THE ONLY REASON THE OFFICER STOPPED THE VEHICLE WAS DUE TO ITS HEADLIGHT ALLEGEDLY BEING DEFFECTIVE. I REFUTE THIS AND AM 100% SURE BOTH LIGHTS WERE PERFECTLY FINE. IN THIS CASE THE CRUCIAL INQUIRY IS WHETHER, AT THE TIME OF THE STOP, THE OFFICER EITHER SAW AN INFRACTION COMMITED OR HAD A REASONABLE SUSPICION THAT A CRIME WAS COMMITED OR WAS ABOUT TO BE COMMITED. UNITED STATES V. BRIGNONI-PONCE, 422 U.S. 873, 880, 95 Ct 2574, 45 L.ED 2d 607 (1975). A LAW ENFORCMENT OFFICER IS ENTITLED TO STOP A VEHICLE WITHOUT A WARRANT WHEN

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THE OFFICER HAS PROBABLE CAUSE TO BELEIVE THAT A TRAFFIC INFRACTION HAS BEEN COMMITED IN HIS PRESENCE. SEE RCW 46.64.030; RCW 10.31.100; STATE V. LADSON, 138 WN 2d 343, 361, 979 P 2d 833 (1999). STATE V. MONTGOMERY, 31 WN APP. 745, 752, 644 P. 2d 747 (1982). STATE V. UNGA, 165 WN 2d 95, 101, 196, P 3d 645 (2008). IF POLICE TACTICS MANIPULATED OR PREVENTED A DEFENDANT FROM MAKING A RATIONAL, INDEPENDANT DECISION ABOUT GIVING A STATMENT, THE STATMENT IS INADMISSIBLE. STATE V. UNGA, 165 WN 2d AT 102.

AS FAR AS THE WARRENT IS CONCERNED IT WAS CLEARLY AND SPECIFICLY STATED THE WARRANT WAS FOR METHAMPHETIMINE ONLY NOT CHECKS, PRINTERS, AND IDENTIFICATION CARDS THE PARTICULARITY OF THE 4TH AMENDMENT

HAS AS ONE OF ITS PURPOSES THE AVOIDANCE OF WARRANTS ISSUED ON LOOSE, VAGUE, OR DOUBTFUL BASIS OF FACTS. STATE V. RIVERA, 76 APP 519 (1995).

I HAVE NO CASE LAWS ON MY ARGUMENT FOR THE EXCEPTIONAL SENTENCE, HOWEVER THEY BASED IT ON SOPHISTICATION AND MULTIPLE VICTIMS BOTH ARE CLEARLY FALS THERE WAS NO AGGRAVATORS OR MITIGATING FACTORS THAT WOULD ALLOW AN EXCEPTIONAL SENTENCE I HAVE A "0" FOR A OFFENDER SCORE AND AGAIN <u>NO</u> MITIGATING FACTORS.

<u>CONCLUSION</u>

THEREFORE EVERYTHING PURSUANT TO DETENTION OF THE OCCUPANTS OF THE VEHICLE

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SHOULD BE DISMISSED AS EVIDENCE.

I AM ASKING FOR TIME BACK AND REVERSE OF ALL CHARGES ASSOCIATED WITH CASE # 13-1-00033, OR IN THE ALTERNATIVE RESENTENCE ME IN THE STANDARD SENTENCING RANGE WHICH WAS 14-17 MONTHS

DATED: OCTOBER, 13 2016

RESPECTFULL SUBMITTED
DERRICK R UNBEWUST

PRO SE, APPELLANT

FILED

16 OCT 24 PM 2:30

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DERRICK UNBEHAUST 113556

IDAHO STATE CORRECTIONAL INSTITUTION
PO BOX 14
BOISE, ID 83707

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DIVISION II
2016 OCT 25 AM 9:57
STATE OF WASHINGTON
BY _____
DEPUTY

WASHINGTON STATE
COURT OF APPEALS, DIVISION II

DERRICK UNBEHAUST	CASE No. 48340-8-II
VS.	PROOF OF SERVICE BY MAIL
STATE OF WASHINGTON	

COMES NOW, DERRICK UNBEHAUST, PLAINTIFF IN THE ABOVE ENTITLED

THIS IS MY MOTION OF "PROOF OF SERVICE BY MAIL" FOR "OPENING BRIEF PART 2 OF 2"

RESPECTFULLY SUBMITED THIS 18TH DAY OF OCTOBER 2016

From:Wahkiakum Superior Court 3607958813 10/25/2016 09:54 #566 P.014/017

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT ON THE 18TH DAY OF OCTOBER 2016, I MAILED A TRUE AND CORRECT COPY OF THE OPENING BRIEF, VIA PRISON MAIL SYSTEM FOR PROCESSING TO THE U.S. MAIL SYSTEM TO:

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CATHLAMET, WA 98612

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DERRICK R UNBEHAUST 113556

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WASHINGTON STATE
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2016 OCT 25 AM 9:57
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DEPUTY

DERRICK UNBEHAUST	CASE NO 48340-8-II
VS.	PROOF OF SERVICE BY MAIL
STATE OF WASHINGTON	

COMES NOW, DERRICK UNBEHAUST, PLAINTIFF IN THE ABOVE ENTITLED

THIS IS MY MOTION OF "PROOF OF SERVICE BY MAIL" FOR "OPENING BRIEF PART 2 OF 2"

RESPECTFULLY SUBMITTED THIS 18TH DAY OF OCTOBER 2016

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CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT ON THE 18TH DAY OF OCTOBER 2016, I MAILED A TRUE AND CORRECT COPY OF THE OPENING BRIEF, VIA PRISON MAIL SYSTEM FOR PROCESSING TO THE U.S. MAIL SYSTEM TO

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