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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

By

STATEMENT OF ADDITIONAL AUTHORITIES

RAP 10.8

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IN THE MATTER OF THE PERSONAL RESTRAINT OF  
ALLEN FREDRICK REXUS

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DIVISION III OF THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

83307-3

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NUMBER 275191

Benton County Superior Court No. 05-1-00711-1

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April 18, 2009

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Allen F. Rexus  
DOC # 890703  
Unit 8, D-11  
Washington State Penitentiary  
1313 North 13th Avenue  
Walla Walla, Washington  
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STATEMENT OF ADDITIONAL AUTHORITIES  
RAP 10.8

This is a Statement of Additional Authorities as allowed by RAP 10.8. It is intended to augment the arguments already put forth and filed with the court in the Personal Restraint Petition of Allen F. Rexus, Division III Court of Appeals for Washington State No. 275191.

No arguments are put forth, but for sake of clarity, the intended quotes are included in as short of form as possible with their respective cases.

1) DEFINITION OF A SEARCH UNDER THE FOURTH AMENDMENT

A) ST. V. HASTINGS, 119 Wn.2d 229, 243, 830 P.2d 658 (1992).

(Under the Fourth Amendment, obtaining evidence is a "search" if it infringes on an expectation of privacy society is prepared to recognize as reasonable. SKINNER V. RAILWAY EXECUTIVES ASS'N, 489 U.S. 602, 616, 103L.Ed.2d 639, 109 S.Ct. 1402 (1989); MARYLAND V. MACON, 472 U.S. 463, 469, 86 L.Ed.2d 370, 105 S.Ct. 2778 (1985).)

2) FAILURE TO CARRY BURDEN OF PROOF - ABSENCE OF EXPRESS FINDINGS AT SUPPRESSION HEARING

A) ST. V. ARMENTA, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

(In the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed to sustain their burden on the issue.<sup>9</sup> SMITH V. KING, 106 Wn.2d 443, 451, 722 P.2d 796 (1986), review denied, 118 Wn.2d 1021 (1992).)

B) ST. V. KULL, 155 Wn.2d 80, 86, 118 P.3d 307 (2005).

(Footnote 5 - ... in reviewing the findings from a suppression hearing, the appellate court will presume that the State has failed to prove a factual issue if the trial court fails to make a finding on that issue. ARMENTA, 134 Wn.2d at 14.).

The following authorities can help determine issues of first impression and greater protection of Article 1 § 7, as directed by ST. V. GUNWALL, 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986), factors 3, 4 and 6.

3) PARENTAL RIGHTS TO CHILDREN - PRECEDENT

A) ST. V. WHITE, 141 Wn.App. 128, 137-39, 168 P.3d 459 (2007).

(... access could be revoked as readily as the access Janet [owner] granted her son .... each party's access is contingent on the party's

relationship with Janet.)

B) ST. V. SUMMERS, 52 Wn. App. 767, 771-73, 764 P.2d 250 (1988).  
(More importantly, even where there is such an 'agreement', it is always subject to revocation by the parent, who retains the ultimate power.)

C) ST. V. VIDOR, 75 Wn.2d 607, 609-10, 452 P.2d 961 (1969).  
(Consent by mother to a search of her son's room.)

D) ST. V. KINDERMAN, 271 Minn. 405, 409, 136 N.W.2d 577, 580  
(1965), cert. denied, 384 U.S. 909, 16 L.Ed.2d 361, 86 S.Ct.  
1349 (1966).

(We can agree that the father's 'house' may also be that of the child, but if a man's house is still his castle in which his rights are superior to that of the State, those rights should be superior to the rights of the children who live in his house.)

E) IN re SALYER, 44 Ill. App.3d 854, 358 N.E.2d 1333, 1336 (1977).  
(... the mother could lawfully consent... because, as a parent, she possessed 'authority superior to that of her son'...)

F) TATE V. STATE, 32 Md. App. 613, 363 A.2d 622, 626-27 (1976).  
(mother possessed 'superior authority' over room of 17 year old son.)

G) GRANT V. STATE, 267 Ark. 50, 589 S.W.2d 11, 14 (1979).  
(Foster parent had right of access and control over entire premises.)

H) UNITED STATES V. DiPRIMA, 472 F.2d 550, 551 (1st CIR. 1973).  
(Even if minor child thinks of room as 'his', overall dominance will be in parents.)

#### 4) TECHNOLOGY PRECEDENTS

A) ST. V. YOUNG, 123 Wn.2d 173, 184, 867 P.2d 593 (1994).  
(... The device discloses information about the activities occurring within the confines of the home, and which a person is entitled to keep from disclosure absent a warrant. Thus, this information falls within the "private affairs" language of Const. Article 1 § 7. ...we recognize that as technology races ahead...)

B) ST. V. FAFORD, 128 Wn.2d 476, 485-86, 910 P.2d 447 (1996).  
(As we have repeatedly emphasized in considering constitutional privacy protections, the mere possibility that intrusion on otherwise private activities is technologically feasible will not strip citizens of their privacy rights. ST. V. YOUNG, 123 Wn.2d 173, 186, 867 P.2d 593 (1994); ST. V. MYRICK, 102 Wn.2d 506, 513-14, 688 P.2d 151 (1984).) (The sustainability of our broad privacy act depends on its flexibility in the face of a constantly changing technological landscape.)

C) ST. V. JACKSON, 150 Wn.2d 251, 260, 76 P.3d 217 (2003).

([The] nature and extent of information obtained by police, for example, information concerning a person's ... activities, is relevant in deciding whether an expectation of privacy an individual has is one which citizens of this state should be entitled to hold.)

D) ST. V. MCKINNEY, 148 Wn.2d 20, 29-30. 60 P.3d 46 (2002).

(The key is whether the subject matter of the claimed privacy interest would provide discrete information about the individual's activities, intimate details of his or her life...)

5) DEFINITION OF A CLOSED CONTAINER - PRECEDENT

A) ST. V. PARKER, 139 Wn.2d 486, 525, 987 P.2d 73 (1999).

(The court construed the term "'container'" to mean "'any object capable of carrying another object'". NEW YORK V. BELTON, 453 U.S. 454, 460 n.4, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).)

6) EVIDENCE GATHERED BY A PRIVATE ACTOR DISALLOWED

A) ST. V. FAFORD, 128 Wn.2d 476, 489, 910 P.2d 447 (1996).

(We conclude that the exploitation of Fields' [private actor] information thoroughly tainted the subsequent search and seizure to demand suppression of the evidence.)

7) HEIGHTENED BURDEN OF PROOF TO THE STATE TO PROVE EXCEPTION TO THE WARRANT REQUIREMENT

A) ST. V. HATCHIE, 133 Wn. App. 100, 112, 135 P.3d 519 (2005).

(The seriousness of the crime will heighten the burden placed on

the government to show that an exception to the warrant requirement applies. ST. V. CHRISMAN, 100 Wn.2d 814, 822, 676 P.2d 419 (1984).)

B) ST. V. SMITH, 115 Wn.2d 775, 789, 801 P.2d 975 (1990).

(The State bears the burden of showing by clear and convincing evidence the validity of the consent.)

8) DETERMINATION OF COMMON AUTHORITY - PRECEDENT

A) ST. V. MORSE, 156 Wn.2d 1, 17-18, 123 P.3d 832 (2005).

(A third party may consent to a search of premises only if that person has "'common authority'" over the premises. ST. V. MATHE, 102 Wn.2d 537, 543, 688 P.2d 859 (1984). ('Common authority' is based on the "'mutual use of the property by persons generally having joint access or control for most purposes'". ILLINOIS V. RODRIGUEZ, 497 U.S. 177, 181, 110 S.Ct. 2793, 111 L.Ed.2d 1481 (1990) (quoting UNITED STATES V. MATLOCK, 415 U.S. 164, 171 n.7, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974)).)

(Footnote 7 Authority to consent under the common authority test refers to the person's authority IN FACT, or actual authority, as opposed to the authority that a police officer might reasonably believe the person has, or apparent authority. See RODRIGUEZ, 497 U.S. at 181-82.)

9) APPARENT AUTHORITY - PRECEDENT

ST. V. MORSE, 156 Wn.2d 1, 11-12, 123 P.3d 832 (2005).

(This court has never used the words 'apparent authority' in the context of a cohabitant's authority to consent to a search... Standing alone, a police officer's subjective belief made in good faith about the scope of a consenting party's authority to consent cannot be used to validate a warrantless search under Article 1 § 7.)

B) STONER V. CALIFORNIA, 376 U.S. 483, 488, 11 L.Ed.2d 856, 84 S.Ct. 889 (1964).

([The United States Supreme Court has similarly stated:]

Our decisions make clear the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority'.)

C) ST. V. ROSE, 75 Wn. App. 28, 35, 876 P.2d 925 (1994).

(Apparent authority applies "to situations in which an officer would have had valid consent to search if the FACTS were as he reasonably believed them to be ... A search premised upon an erroneous view of the law will not be validated by the doctrine of apparent authority. UNITED STATES V. WHITFIELD, 939 F.2d 1071, 1073-74 (D.C. CIR 1991).)

(An officer's conclusion that ... the landlord was authorized to enter ... was a misapprehension of the law, and therefore not subject to the application of the apparent authority doctrine. UNITED STATES V. BROWN, 961 F.2d 1039, 1041 (2d CIR 1992).)

(Our own Supreme Court has warned against expanding the doctrine of apparent authority:

It is fundamental that the doctrine which recognizes the validity of a third person's consent to a search must be applied guardedly to prevent erosion of the protection of the Fourth Amendment ... ST. V. SMITH, 88 Wn.2d 127, 156, 559 P.2d 970 (Horowitz, J., dissenting) ( quoting U.S. ex rel. CABEY V. MAZURKIEWICZ, 431 U.S. F.2d 839, 843, (3d CIR. 1970), cert. denied, 434 U.S. 876, 54 L.Ed.2d 155, 98 S.Ct. 226 (1977)).)

D) ST. V. HOLMES, 108 Wn. App. 511, 519-20, 31 P.3d 716 (2001) (... the person who claimed to be a cohabitant did not have a key, police officers should have doubted her authority to consent, despite her explicit assurance that she lived there.)

10) ACTUAL AUTHORITY - PRECEDENT

A) ST.V. MORSE, 156 Wn.2d 1, 12, 123 P.3d 832 (2005).

(See UNITED STATES V. MATLOCK, 415 U.S. 164, 171, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974), as the proper guide for determining questions of consent under Article 1 § 7. ST. V. MATHE, 102 Wn.2d 537, 543, 688 P.2d 859 (1984). MATLOCK ... did not involve the doctrine

of apparent authority but rather whether a wife who was a co-habitant with her husband had ACTUAL authority over the marital residence. Because our constitution focuses on the rights of the individual rather than on the reasonableness of the government action, the apparent authority doctrine, as articulated in RODRIGUEZ [supra] and applied in the Fourth Amendment context, is not appropriate to any analysis under Article 1 § 7.)

B) ST. V. RISON, 1116 Wn. App. 955, 961, 69 P.3d 362 (2003).

(Mr. Farrell did not jointly own, use, possess or control Mr. Rison's eyeglass case. Mr. Farrell did not then have actual authority to consent to a search of Mr. Rison's eyeglass case.)

C) ST. V. LEACH, 113 Wn.2d 735, 738, 782 P.2d 1035 (1989).

(In general.)

11) DETERMINATION OF PRIVACY INTEREST - PRECEDENT

A) ST. V. SURGE, 160 Wn.2d 65, 71-72, 156 P.3d 208 (2007)

(... the protections of Article 1 § 7 and authority of law inquiry are triggered ... when a person's private affairs are disturbed or the person's home is invaded. ST. V. CARTER, 151 Wn.2d 118, 126, 85 P.3d 887 (2004).)

(We begin by examining the historical treatment of the interest asserted, which may disclose that the interest is one a citizen has held. ST. V. MCKINNEY, 148 Wn.2d 20, 27, 60 P.3d 146 (2002).)

B) ST. V. JORDEN, 160 Wn.2d 121, 137, 156 P.3d 893 (2007).

(To decide if an interest is one that citizens of the State "have held", we look to the protection historically accorded the interest. See e.g. MCKINNEY, 148 Wn.2d at 27; ST. V. MESIANI, 110 Wn.2d 454, 456-57, 755 P.2d 775 (1988).)

(There, [MESIANI] the court acknowledged the historical recognition by this court of "the privacy interest of the individuals and objects in automobiles.)

C) ST. V. CHEATAM, 150 Wn.2d 626, 642, 81 P.3d 830 (2003)  
(There are no express limitations on the right to privacy under Article 1 § 7. ST. V. O'NEILL, 148 Wn.2d 564, 584, 62 P.3d 489 (2003); ST. V. FERRIER, 136 Wn.2d 103, 111, 960 P.2d 927 (1998); ST. V. WHITE, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982).)  
D) ST. V. GUNWALL, 106 Wn.2d 54, 61-62. 720 P.2d 808 (1986).

(In general).

E) RAKAS V. ILLINOIS, 439 U.S. 128, 142, 99 S.Ct. 421, 58 L.Ed. 2d 387 (1978).

(A person can have a legally significant interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place.)

12) EFFORTS TO PRESERVE PRIVACY - PRECEDENT

A) UNITED STATES V. HAYDEL, 649 F.2d 1152 (5th CIR. 1981)  
(Defendant had legitimate expectation of privacy with respect to records secreted in his parents home and under their bed... he conducted a significant portion of his gambling activities at the home and owned [the] records that were seized ... and defendant exhibited [a] subjective expectation that contents of [the] box were to remain private.)

B) ST. V. EVANS, 159 Wn.2d 402, 409, 150 P.3d 105 (2007).  
(Two fold test: (1) Did he "exhibit an actual (subjective) expectation of privacy by seeking to preserve something as private?", and (2) "[d]oes society recognize that expectation as reasonable?". ST. V. KEALEY, 80 Wn. App. 162, 168, 907 P.2d 319 (1995).)

(He kept his briefcase in his truck, it was closed and locked, and he objected to its seizure...)

C) ST. V. KEALEY, 80 Wn. App. 162, 168-170, 907 P.2d 319 (1995).  
(The court must determine whether the defendant "took normal precautions to maintain his privacy." RAWLINGS V. KENTUCKY, 448 U.S. 98, 105, 100 S.Ct. 2556, 65 L.Ed.2d 663 (1980); see also

JOHN WESLEY HALL, JR., 1 Search and Seizure § 2.6 at 56 (2d ed. 1991).)

(Kealey demonstrated she took normal precautions to preserve the privacy of her purse. [It] ... was zipped shut and closed to public viewing ... we focus on her efforts to maintain her privacy.<sup>12</sup> Just because the accused temporarily relinquishes physical possession of the object, he does not ipso facto forego his expectation of privacy.<sup>14</sup>)

(Footnote 12 - ST. V. JORDAN, 29 Wn. App. 924, 927, 631 P.2d (1981) (by drawing curtains, individuals demonstrated an expectation of privacy, fact that occupants did not completely succeed in drawing curtains does not diminish the reasonableness of their expectation of privacy.); ST. V. McALPIN, 36 Wn. App. 707, 716, 677 P.2d 185 (by locking briefcase, defendant exhibited a legitimate expectation of privacy), review denied, 102 Wn.2d 1011 (1984).)

(Footnote 14 - HALL, supra, § 13:3 at 568-69. See RIOS V. UNITED STATES, 364 U.S. 253, 262 n.6, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960) ("passenger who lets package drop to the floor of a taxi cab in which he is riding can hardly be said to have 'abandoned' it"). See also ST. V. MOORE, 29 Wn. App. 354, 359 n.1, 628 P.2d 522 (defendant missed bus but still retained privacy interest in contents of checked baggage), review denied, 96 Wn.2d 1003 (1981).)

(An expectation of privacy must be reasonable, i.e. are "rooted in 'understandings that are recognized and permitted by society' " 16.)

(Footnote 16 - ST. V. JONES, 68 Wn. App. 843, 850, 843 P.2d 1358 (1993), ( quoting MINNESOTA V. OLSON, 495 U.S. 91, 100, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) ( quoting RAKAS V. ILLINOIS, 439 U.S. 128, 144 n.12, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).)

13) EFFORTS BY POLICE TO OBTAIN WARRANT --PRECEDENT

A) ST. V. SUMMERS, 52 Wn. App. 767, 773, 764 P.2d 250 (1988).

(Footnote 5 - While we recognize that it may at times be difficult for a police officer to make such a determination [parent-child relationship] in the field, we are also mindful that warrantless searches are intended to be the exception, not the rule ... Without ... exigencies, we do not think it impedes the work of police to require an officer to obtain a warrant where there are indicia ...)

B) UNITED STATES V. IMPINK, 728 F.2d 1228, 1231 (9th CIR. 1984).

(Where the police have an ample opportunity to obtain a warrant, we do not look kindly on their failure to do so.)

C) ST. V. WALKER, 136 Wn.2d 678, 691-92, 965 P.2d 1079 (1998).

(Footnote 5 - When a search pursuant to a warrant would be constitutional, a warrant can almost always be obtained. The wise course for the police is not to rely on the consent of a private person unless they must. When police rely on consent, either (1) they could not have obtained a warrant because a constitutional requirement like probable cause was not met, (2) they could have obtained a warrant but did not... In the first two situations, the courts should place a heavy burden of proving consent on the police. LLOYD J. WEINRAB, Generalities of the Fourth Amendment, 42 U. Chi. L. Rev. 47, 57, 63, (1974).)

(There was no concern of officer safety nor fears of disappearing evidence. During the suppression hearing, the State's attorney asked Detective Blodgett, "Why didn't you just get a search warrant in this instance?", to which [he] candidly responded, "Primarily because it's time consuming to get a search warrant." ... saving a few minutes is not a valid reason to bypass the warrant requirement in Washington because obtaining a warrant always requires some effort. In LEACH [supra], we held the line and explained "we refuse to beat a path to the door of exceptions." LEACH, 113 Wn.2d at 744.

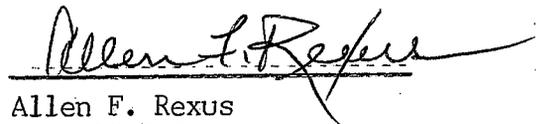
D) ST. V. MORSE, 156 Wn.2d 1, 15, 123 P.3d 832 (2005).

(If the police choose to conduct a search without a warrant based upon the consent of someone they believe to be authorized to so consent, the burden of proof on issues of consent and the presence or absence of other cohabitants is on the police.<sup>5</sup> ST. V. ACREY, 148 Wn.2d 738, 746, 64 P.3d 594 (2003).) (Footnote 5 - We recognize that issues of "common authority" and "presence" will not always be simple and straightforward. It may be difficult to determine, for example, (1) whether a child has "common authority" over [his] parent's home sufficient to authorize that child to consent to a warrantless search ... However, such difficulties may be avoided by police by obtaining either a search warrant or the consent of the person whose property is to be searched.)

14) IRRELEVANCE OF LOCATION OF SEARCH - PRECEDENT

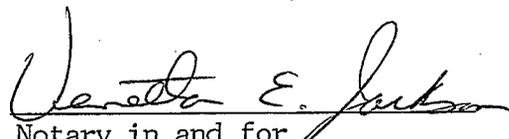
A) ST. V. BOLAND, 55 Wn. App. 657, 664-65, 781 P.2d 490 (1989). [Alexander, C.J., dissenting]

(... Our Supreme Court has expressly stated that the location of the search is not determinative; rather, the appropriate inquiry is whether the State has unreasonably intruded into the individual's private affairs. See ST. V. MYRICK, 102 Wn.2d 506, 510-13, 688 P.2d 151 (1984).)



Allen F. Rexus  
DOC # 890703  
Petitioner, Pro Se

Subscribed and sworn to before me  
this 18th day of April, 2009.



Notary in and for  
the State of Washington,  
residing in Walla Walla, Wa.

My Commission expires: April 1, 2013



Allen Fredrick Rexus

NO. 275191

V.

State of Washington

**AFFIDAVIT OF SERVICE  
BY MAILING**

I, Allen Fredrick Rexus, being first sworn upon oath, do hereby certify that I have served the following documents:

Statement of Additional Authorities

as allowed under RAP 10.8, of the State of Washington

Supplement to the Personal Restraint Petition of Allen F. Rexus

**Upon:** Renee Townsley  
Clerk/Administrator  
Court of Appeals, Division III  
of the State of Washington  
Spokane, Washington  
99201

For distribution to:  
Chief Judge of the  
Court of Appeals, Div. III  
and  
Andrew Miller  
Benton County Prosecutor  
7122 West Okanogan Pl.  
Kennewick, Wa.  
99336

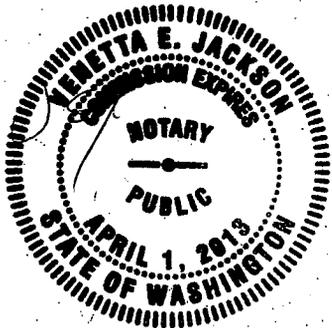
**By placing same in the United States mail at:**

**WASHINGTON STATE PENITENTIARY  
1313 NORTH 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA. 99362**

On this 18th day of April, 2009.

Allen F. Rexus  
Name & Number #890703

SUBSCRIBED AND SWORN to before me this 18th day of April, 2009.



Venetta E. Jackson  
Notary Public in and for the State of  
Washington. Residing at Walla Walla,  
WA. My Commission Expires: April 1, 2013



April 18, 2009

To: Renee Townsley  
Clerk/Administrator  
Court of Appeals  
Division III  
Spokane, Washington  
99201-1905

**FILED**

**APR 21 2009**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_ *SA*

From: Allen Rexus  
DOC # 890703  
Unit 8, D-11  
WSP  
1313 North 13th Avenue  
Walla Walla, Washington  
99362

RE: Statement of Additional Authorities, RAP 10.8  
Case # 275191, Personal Restraint Petition of Allen Rexus

Dear Ms. Townsley:

Enclosed you will find a "Statement of Additional Authorities", in accordance with RAP 10.8. I respectfully ask that you allow this to be included with my Personal Restraint Petition already on file with the Court. I ask that a copy be given to the Chief Judge for consideration, and an additional copy be made and sent to Andrew Miller, Benton County Prosecutor, 7122 W. Okanogan Pl., Kennewick, Wa., 99336.

Please inform me if the 10.8 Statement is accepted, and let me know when any appointments and court dates are set. I greatly appreciate all the help you have given me.

Sincerely,

Allen F. Rexus