RECEIVED
SUPREME COURT
STATE OF WASHINGTON

CLERK'S OFFICE

5/22/2017 8:40 am

RECEIVED ELECTRONICALLY

No. 93923-3

Court of Appeals Division II No. 47205-8-II

Clark County Superior Court No. 13-1-0135-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff-Appellee-Petitioner,
v.

JOHN GARRETT SMITH,
Defendant-Appellant-Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM

COURT OF APPEALS STATE OF WASHINGTON DIVISION

II BY WAY OF APPEAL FROM THE SUPERIOR COURT OF

THE STATE OF WASHINGTON FOR CLARK COUNTY

RESPONDENT'S SUPPLEMENTAL BRIEF

IN RESPONSE TO AMICUS CURIAE OF THE ACLU

TABLE OF CONTENTS

I. Notice
II. Identity and Status of Respondent
III. The Most Prominent Point of the Case
IV. Response to Issues Presented
V. Argument for Vitiation Without Delay
VI. Summary
VII. Conclusion

EXHIBITS

i. Null Probable Cause / Fraudulent Absence of Jurisdiction
ii. Falsified Warrant Affidavit / Materially and Recklessly Deceptive

TABLE OF AUTHORITIES

Beck v. Ohio, 379 US 89, 85, S.Ct. 223 (1964)
Brown v. Wainwright, 785 F.2d 1457, 1464 (11th Cir. 1986)
Cooper v. Oklahoma, 517 US 348, 363-65, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996)
Daniels v. Williams, 474 US 332, 106 S.Ct. 662, 665, 88 L.Ed.2d, 662 (1986)
Franks v. Delaware, 438 US 154, 57 L.Ed.2d 667, 98 S.Ct. 2674 (1978)
Giglio v. US, 405 US 150, 153 92 S.Ct. 763
Hazel Atlas Glass Company v. Hartford Empire Company, 64 S.Ct. 997 (1944)
Joint Anti-Fascist Refugee Committee v. McGrath, 341 US 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1951)
Mason v. Hanks, 97 F.3d 887 (CA 7, 1996)
Miller v. Pate, 386 US 2, 17 L.Ed. 2d 690, 87 S.Ct. 785 (1967)
Mooney v. Holohan, 294 US 103, 55 S.Ct. 340, 79 L.Ed. 791
Morrissey v. Brewer, 408 US 484, 32 L.Ed.2d 484, 92 S.Ct. 2539, 2600 (1972)
Napue v. Illinois, 360 US 264, 269, 79 S.Ct. 1173
Orner v. Shalala, 301 F.3d, 1307, 1310 (10/94)
Riley v. California, 573 US, 134 S.Ct., 2473 (2014)
Rook v. Rook, 233 VA 92, 95, 353, S.E.2d 756, 758 (1987)
Spencer v. Krause, 14-35689, 9th Circuit Court of Appeals (2017)

State v. Modica, 164 Wn.2d 83, 186 P.3d 1062 (2008)
State v. Robinson, 38 Wn. App. 871, 691 P.2d 213 (1984)
State v. Townsend, 147 Wn.2d 666, 57 P.3d 255 (2002)
Stuck v. MedExaminers, 94 CA 2d, 751, 211 P.2d, 389
US v. Agurs, 427 US 97
US v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990)
US v. Brown, 631 F.3d 638 (CA3, 2011)
US v. Cook, 45 F.3d 388 (CA10, 1995)
VTA Inc. v. Airco Inc., 597, F.2d 220, 224. .N.8, 10/79
261 Kansas at 862

STATUTES AND RULES

18 USC 1030
24 Am Jur 2d, Dismissals section 56, 11 ALR 3d 1153
CR 60(b)(4)
CrR 3.2.1(a)
Federal Rule 4.1(6)(A)
Federal Rule Crim. P.4(a),(b)(1)(D),(b)(2)
RCW 4.72.010(4)
RCW 10.73.100(4)
United States Constitution, Amendments IV & XIV
Washington Constitution, Article 1, Sections 7 & 10

OTHER

Crim. Proced. Section 3.3 at 140, 2d ED, 1992
Freeman on Judgments, 5th Edition, 661 section 3

I. NOTICE

Due to absence of felony subject matter jurisdiction that was never legally established by any tribunal in the State of Washington, this case including this proceeding of review, is unlawful, fraudulent constitutional harassment of a man whose innocence is affirmed by 100% of all untainted evidence and truth.

See Exhibit 'i' for proof of the absence of legal jurisdiction, sine que non the case is void ab initio.

This mandates the immediate vitiation of this case that is saturated with the fraudulent misrepresentation of spurious evidence whose surface is only exposed by the tacit admission of illegitimacy in the nullified probable cause.

"Probable Cause may NOT be established simply by showing that the officer who made the challenged arrest or search objectively believed he had grounds for his actions" as emphasized in Beck v. Ohio, "otherwise ... the protection of the 4th Amendment would evaporate" (Crim. Procedure Section 3.3).

See Exhibit 'ii' for the further materially and recklessly false warrant affidavit that evinces intent to cover-up the initial fraud of evidence manufacturing. Not only was the iPhone NOT "found in possession of" the Respondent, but it had actually been stolen from him PRIOR to the clearly fixed incident.

The Respondent is constitutionally protected from, not

subject to, unlawful due process. He is therefore not amenable to even this illegal proceeding, but only to the right, lawful release from a corrupted, untenable judgment and sentence. Copious State and Federal laws clearly and concisely described herein pinpoint total and immediate vitiation as the only valid legal order, res judicata.

Any excuse or alibi leading to deferment or delay of this solitary next step can only be viewed as a compounding criminal action in accordance with every longstanding and foundational tenet of both the United States' and the State of Washington's Constitutions.

Denial of ongoing criminal acts committed defiantly under "color of law" (see Section V for 18 USC 1030 and related misprision of felonies associated with such denial) is an "obvious and significant" "State ...practice that betrays a fundamental principle of justice" and thereby "offends the Due Process Clause" (Cooper v. Oklahoma).

II. Identity and Status of Respondent

John Garrett Smith, Respondent Pro Se, does hereby come before the Supreme Court of Washington in good faith.

The Respondent remains unlawfully incarcerated for a crime that all untainted evidence proves did not happen, but was staged by a malicious and fraudulent series of lies that commenced

with the theft of his private iPhone and digressed to the manufacturing of a brutally misrepresented and faked voice recording ostensibly extracted from the stolen phone.

This igneus fatui diversion into Privacy Law minutiae regarding that synthetically manufactured voice recording represents cascading, unconstitutional harassment of the Respondent that is being carried out in the total absence of legally mandatory jurisdiction.

III. The Most Prominent Point of the Case

This case is a facade. It is the result of an incredibly vicious attempt to destroy a life. The acts of that destruction, and of their concealment, are real, serious crimes in violation of Constitutional and case laws.

This case is extraordinary because of how obvious it really is. 'Resipsa loquitur': it speaks for itself. The facts cannot enable any tribunal with judicial integrity to ignore the irrefutable fraud.

Let it be made clear: No substantial step to intentional felonious assault was ever taken. Attempt to murder never happened. A threat to kill was never spoken.

Instead, as myriad facts prove, law enforcement officials stole an iPhone, staged a crime that never occurred, and then manufactured an alleged recording in order to obtain a thoroughly fraudulent conviction, all in the absence of legal jurisdiction. And

that was only the beginning.

Four years later, the irrefutable criminal acts still being committed under "color of law" include, but are not limited to: unlawful incarceration, theft and unlawful tampering of a federally protected computer (per 18 USC 1030) and its contents used for highly beneficial interstate and international work, and extreme bludgeoning of an innocent man's life, liberty and property.

When the State manufactured the notion that the Respondent unwittingly and inadvertently left evidence of their made-up story of a man's intent and acts to kill a woman that he later (post-conviction) found that he'd been deceived into thinking was his wife [whom was under full guardianship of the court, a fact known to all involved members of the judicial proceedings], they were actually projecting their own devious avarice and malice. The key difference, aside from truth in evidence, is that the State's treachery is highly intentional which makes their ongoing cover-up all the more decadent.

No honorable court acting with jurisprudence can possibly make any next decision other than the immediate vitiation if this mockery of justice and savage abuse of the judiciary. There are, literally, dozens of "Dead-Bang Winners" supporting such Order, just a few of which are presented herein as a counter to the plethora of misdirection fraudulently proffered by the

State in the ongoing, and illegal, attempt to mask truth.

The spurious voice recording, the bogus and moot focus of this unlawful proceeding, serves two functions for the State: first, it was manufactured in order to obtain conviction in order to obfuscate the theft of it in the first place, a theft that is obvious because it preceded the alleged recording; and second, the concealing of the truth about its lawlessness has subsequently become the primary driver for the State to keep up the facade that has been built by perjury, forgery and theft.

The false recording masks the 18 USC 1030 crimes, and then these stalking horse diversions mask the false recording. How sadistically ironic it is when the allies of the State clamor over "balancing Privacy and Public Safety" when it is THEIR presentation that "shields criminal acts" and rides roughshod over the scales of justice!

In a spiraling illusion, the tale-spinners obdurately cling to their untenable yarn in order to hide the lawless acts of compounding concealment.

This is precisely the scenario that Founders George Mason and James Madison fought so diligently to prohibit.

The 14th Amendment secures the "individual from the arbitrary exercise of powers of government" (Daniels v. Williams). "When the government seeks to deprive a person of his liberty, we

afford the greatest procedural safeguards (Morrissey v. Brewer). In this case, right now, the "greatest safeguard" is to jettison these corrupted procedures and replace them with the simple, clear and resolute call to reason. It's time to close the book of fables.

Core American law and rudimentary ethics mandate pulling the plug on the make-believe fix and choosing fact over fiction.

IV. Response to Issues Presented

The Court of Appeals AND the trial court BOTH ruled that consent was NOT implied due to the fact of the inadvertency of the recording. Now, the State and the ACLU argue "that this holding is in tension with well-established case law" (page 15, 4.24.17 Amicus Curiae Brief), citing Townsend, Robinson, and Modica.

The State and the ACLU are inaccurate and misdirecting in this claim that "a person who sets up a voice mail system inherently consents to any recordings it might capture" because that is NOT AT ALL the foundation of these or ANY case law. Robinson involves a voice message left willfully and purposefully on another's answering machine, Townsend willfully and purposefully engaged in e-mail communication, and Modica deals with recordings made under full notice while incarcerated. By all accounts, this case is absolutely sui generis and there is no 'tension' with any case law.

The claim that "by setting up the system that made the

recording, Mr. Smith consented to that recording" is ludicrous and not at all what these other cases posit. Furthermore, because "he did not realize in the moment that the system was active" (i.e. the recording was NOT made willfully or purposefully), the ACLU itself affirms that this case is 180 degrees apart from the laws they cite. The State is reaching for a nexus that is simply not there.

The ACLU further obfuscates the issue at hand in Footnote 1 (also on p. 15) by (a) erroneously assuming the correctness of its inference that setting up a private voice mail innately concedes to its universal divulgement, (b) making light of the "apparent" unwitting nature of the recording even though that unwitting nature was at the very core of the trial court's absolution of Privacy Law protections, and (c) trying to persuade yet further red herring deferment of this inadvertency issue to "a case where it is squarely before the Court, rather than here, where it is unnecessary to the decision", when, IN FACT (fraud notwithstanding), the inadvertency IS THE MAIN ISSUE squarely before the Court here and now, where it has driven this entire Privacy Law discourse.

The argument sounds sublime, but it is void of application:

(1) First, and foremost, the Respondent absolutely did NOT consent to his phone being stolen, his sole reason for calling it in the first place;

(2) Second, the Respondent testified that the "pass through" to

voice mail was inadvertent and unintended, and that fact became the heart of the trial court's rationale for admissibility and subsequent conviction (RP 2A, 168, 11-12): the State cannot now recant and invoke unrelated case law; and

(3) Third, the attempt now to establish the oxymoron of "unintended intent" is the State's germane purpose for this very reconsideration, but it is untenable because 'inadvertent' and 'intentional' are antonyms.

In this case that is now before the Supreme Court, the two vital components required to satisfy the conclusion proffered by the State and the ACLU are thoroughly vacant: (i) there was no consent granted for the recording, let alone its warrantless divulgement (CoA I.1, p.4, FN3 and I.3, B, p.10), and (ii) there was no threat - the spurious recording is an irrefutable fake.

The voice recording, or whatever the 'Frankensteined' audio really is, is illegitimate, inadmissible and illegal. Nevertheless, even if the fraudulent recording were treated as legitimate, the circumstances of this domestic incident fully confirm the applicability of the Privacy Act, and the inadmissibility of the alleged recording: prior response brief, trial record, and COA II ruling affirm the core tenets of a private communication inadvertently recorded via a private smart phone without consent or intent of anyone.

The ONLY conceivable consent could be from the person overheard making computer keyboard strokes in their act of synthesizing the fake compilation in their transparent, nefarious, and failed attempt to match the elapsed time of their spurious assembly to that of the real Verizon voice message by filling the digital space with sundry fabrications.

V. Argument for Vitiation without Delay

Copious and seminal perjured testimony must vitiate the case. When "the undisclosed evidence demonstrates that the prosecutor's case included perjured testimony and that the prosecution knew, or should have known, of the perjury" (US v. Agurs), or "if false testimony surfaces ... and the government has knowledge of it ... the government has a duty to step forward and disclose" (Brown v. Wainwright). "It is established that a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the 14th Amendment" (Napue v. Illinois citing Mooney v. Holohan). "The same result obtains when the State ... allows it (false evidence) to go uncorrected when it appears." A "deliberate deception of a court ... by the presentation of known false evidence is incompatible with the rudimentary demands of justice" (Giglio v. US).

"Franks [v. Delaware] requires suppression of evidence obtained pursuant to a warrant issued on the basis of a false

statement that was both material to the finding of probable cause and made either knowingly and intentionally or with reckless disregard for the truth" (US v. Brown). Strikingly, in this case, the reckless lie about how the phone was obtained (see Exhibit 'ii') is compounded by the fact that legitimate probable cause was never even manifest, yet the officer brashly lies again on the warrant affidavit in order to obfuscate the initial lie.

It is as if the VPD gets to pick and choose what, if any, parts of the Constitution, it cares to adhere to. Their behavior clearly evinces a blatant disregard for the truth that mandatorily voids this case.

Does the preservation of life, liberty and property still matter in Washington and in America? Are the US Constitution's 4th and 14th Amendments, and Article 1, Sections 7 and 10 of the Washington Constitution still relevant? If so, then in light of such obvious and significant breaches of these core foundations of American justice, the Supreme Court of Washington must rule without delay to vacate this lawless case in its appalling entirety.

THE SEVEN PILLARS

Such an Order, to fully dismiss this case and release the Respondent from unlawful restraint, would be founded on those Constitutional cornerstones and supported by no fewer than seven established laws, rules, codes and statutes, each supported by

myriad case precedent described below:

(1) Federal Rule 4.1(6)(A)

Because a judge failed or refused to sign requisite documents in this case, it legally cannot exist. The conviction and incarceration are without lawful jurisdiction and therefore are void. "Once challenged, jurisdiction cannot be assumed: it must be proved to exist" (Stuck v.Med Examiners). Because it is proved herein to NOT exist, the case itself does not exist. Therefore the Respondent must be released.

(2) CrR 3.2.1(a)

In the absence of a judicial determination of probable cause within 4 years, let alone 48 hours as is mandated by statute, it is clear that the "court acted in a manner that is inconsistent with due process", thereby "voiding the judgment" which is now "a nullity" to "be vacated at any time" (261 Kansas @ 862). Furthermore, in light of the incipiently dubious, and now proven fraudulent nature of the faked voice recording used singularly to convict, it must be evinced from the invalid probable cause execution that scienter permeated the acts of the prosecution.

Assured legal Due Process, the Respondent is now due immediate release, and is lawfully protected from, not subject to, fraudulent processes like this wanton deliberation that is diametrically opposed to the honor and civility that guided the

Framers of the Constitutions crafted to protect individuals from such abuses.

(3) US Constitution, 4th & 14th Amendments, and Washington Constitution, Article 1, Sections 7 & 10

The Respondent's security was unreasonably violated by warrant-less seizure and search, sans probable cause, not only grossly depriving him of liberty and property without Constitutional honesty, but also inflicting under "color of law" extraordinary damages by the unlawful offenses, onto him, his parents, his children, and his companies, all of whom continue to be "condemned to suffer grievous loss" (Joint Anti-Fascist Refugee Committee v. McGrath).

"The 4th Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. There can be no retreat from that principle here" (Miller v. Pate citing Mooney v. Holohan). "Forged ... false" submittals and "lying under oath" serve as bases for "dismissal" (24 Am.Jur 2D Dismissals). "A judgment is void ... if the court that rendered [it] lacked jurisdiction or in circumstances in which the court's actions amount to plain usurpation of power constituting a violation of due process" (US v. Boch Oldsmobile, Inc.).

This case was fraudulent imprimis. These cunning deceptions and bellicose actions demand remedy in the form of

total vitiation.

(4) CR 60(b)(4)

Direct, intrinsic fraud to obtain a conviction voids the conviction. While the Respondent is not amenable to flagrant process on account of the spuriously claimed jurisdiction imprimis, he is not secluded from the lawful protection of this overarching rule. "When the underlying judgment is void, relief is NOT a discretionary matter: it is MANDATORY" (Orner v. Shalala citing VTA, Inc. v. Airco, Inc.).

(5) RCW 4.72.010(4)

"A void judgment is one that has been procured by fraud" (Rook v. Rook). Dismissal "for fraud practiced by the successful party in obtaining judgment or order" is the primal intrinsic remedy.

(6) RCW 10.73.100(4)

The absence of probable cause granting jurisdiction IS, by default, the trial court's admission of insufficiency (via illegitimacy or illegality) of the evidence. Sans legal jurisdiction, the entire case collapses. Fraud to obtain jurisdiction voids the entire case because a case framed by a fraud in the form of an illegitimate probable cause shrouded by deception, is void ab initio. "There can be no question of the vitiating effect of ... fraud of character, going to the very jurisdiction of the court, without which a judicial

determination is a mere nullity" (Freeman on Judgments, 5th Ed.).

(7) 18 USC 1030

As if the first six grounds are not enough, this United States Code drills down to the true criminal depth associated with Clark County's and the VPD's actions, and introduces severe misprision of felony liabilities.

Citing the Code: "(a) Whoever ... (2) intentionally accesses a computer without authorization and thereby obtains (c) information from any protected computer, (4) knowingly and with intent to defraud, accesses a protected computer without authorization ... and by means of such conduct furthers the intended fraud ... shall be punished as provided; (e) as used in this section, (1) the term computer means an electronic... high-speed data processing device performing ... storage functions; (2) the term protected computer means a computer (B) which is used in affecting interstate or foreign commerce or communication ...".

Now, if the status quo lies are allowed to continue, Vancouver and Clark County will stoke more igneus fatui arguments full of libel and slander against the global scope of the Respondent's beneficial advancements in pure energy, food, water and air production, or that the iPhone is neither "a computer" nor "protected" (or that they have some sort of twisted 'Minority Report' right of clairvoyance to have staged the alleged crime that

they not only provoked with their innate intent, but then fabricated when it did not manifest in reality).

Before enabling such diversions, consider two facts:

(a) While the VPD accessed computers linked to the iPhone via remote cyber / cloud tampering, the US Supreme Court has already acknowledged the ubiquitous reality that modern Smart Phones are essentially computers (see Riley v. California); and

(b) the call that was allegedly recorded was, itself, made from the Respondent's phone with an (808) area code used primarily for his company's clean energy work in Hawai'i, and the call was made to his mobile phone with a (503) area code associated with the registered location of his Oregon Corporation.

Meanwhile, despite the County's relentless vitriol and vicious sabotage (see Statement of Additional Grounds in this case, October 2015, section IV.C, for a partial list of just the itemized thefts that were identified in the trial record), abundant public testimony remains to verify the Respondent's long-standing engineering career that has included some level of commerce, and communication, about resource stewardship in all 50 United States, and on all 7 Continents.

Any argument against the "protected" status of the "computer" is futile. This incontrovertible truth escalates the actions of Clark County and the VPD from "tampering with the

administration of justice", itself intolerable "with the good order of society" (see Hazel Atlas Glass v. Hartford Empire), to the level of independent felonies, consisting of both interstate and international crimes. THE GRAVITY HERE IS SIGNIFICANT: THESE ARE SERIOUS CRIMES.

The consequence of these offenses is too monumental to address in this brief that is simply to insist on the rightful and lawful vitiation of this ensuing fraudulent conviction and illegal sentence. Most alarming, until such vitiation is manifest, the 18 USC 1030 violations persist unabated. With such compelling proof now in hand, does this Court endorse, ignore or respond with taciturn complicity to accruing lawlessness? What cause, then, for ongoing, unconstitutional delay in ordering the beginning of reconciliation by at least restoring liberty?

VI. SUMMARY

Spurious audio evidence served as the singular grounds for executing a pre-arranged conviction for a crime that all genuine evidence proves never happened. This incontrovertible fact alone vitiates the entire case under any reasonable judicial analysis.

All authentic, professional medical evidence disproves the equally fraudulent injury claims. The only eyewitness to the alleged crime was a severely intoxicated woman with a history of alcoholism and mental illness who committed no less than 49

counts of motive-revealing perjury at trial (see S.A.G. Section IV.C), and painted her own face with cosmetics to simulate spurious injuries for "selfie" photos a-la-clown that are readily impugned by all professional medical records and eyewitness testimonies (SAG Exhibits 1, 2, 3, 4 & 7, and RP 3B,836, 11-14).

The perjured testimony of the State's unqualified producer of the illegitimate audio recording was similarly laced with irrefutable lies before and at trial (RP 1, 69, 21; 1, 72, 2; 2A, 206, 21; and Exh. 2 of Resp. Brief, pg. 2 of 5, line 3). These flagrant misconducts were, and still are, being perpetuated with full scienter and malicious intent. What is more disturbing than the obdurate claims to such untenable lies is that, after 4 years, the State still needs to be advised that lying and theft are morally and legally wrong.

This ongoing diversion is unlawful from every rational vantage point. Just because Clark County defiantly operates with an "astonishing" policy that "the police are free to hoke up" a "case to make sure" there is conviction and that "there is no violation of the Constitution if evidence is fabricated" (Spencer v. Krause, 2017), does that give license to the Courts to endorse or enable such debauchery? Of course not.

Clark County fabricated a make-believe case that they now have the audacity to challenge the Supreme Court with. Academic

debate over Privacy Law interpretations have their place, but not here, not now.

This proceeding is extraordinarily significant because it represents an unlawful, igneus fatui diversion from truth that is unconstitutional because it continues to deprive a US Citizen life, liberty and property without due process of justice. The Bill of Rights affirms that liberty is far more important than such unreasonable and reckless escapades.

The Federal and State rules and case precedents that mandate the indispensable signature of a judge to any order are extensive. Just a few were introduced in Section V that insist that a "judge must sign" all legal documents in order for them to become valid. Based on myriad statutes, Exhibit 'i' actually contains nothing at all. The 6 clerk-certified pages are, by law, confirmation of the absence of probable cause and, therefore, by law, the absence of jurisdiction by ANY tribunal in Washington to deliberate AT ALL over this phantom case that is illegitimate at every stage.

The utter absence of probable cause combined with the undeniable proof that the core fraud began even before the staged crime was alleged to occur, are NOT independent. Just like on the void probable cause, the taciturn non-response and denial by the State is an admission of an arbitrary action and illegal cover-up

that is malfeasance in flagrant violation of the 4th and 14th Amendments of the US Constitution.

Collectively, this "White Elephant" named "Fraudulent" can no longer be ignored. It IS the whole case because it testifies to its comprehensive illegality. Ignoring it is, in itself, also illegal, not just because the acts clearly and obviously constitute a "Dead-Bang Winner" for dismissal, but because the theft and sabotage are, under 18 USC 1030, literal crimes. The only legally tenable ruling is the same today as it was nearly 4 years ago: total vitiation of this appalling case.

VII. CONCLUSION

For the simple fact that felony subject matter jurisdiction was never obtained, but only feigned by fraud, the case should be closed immediately. Here lies a matter of grave importance: with sheer absence of jurisdiction, compounded by multiple varieties of fraud crafted to masquerade its absence, a local government maliciously fabricated an alleged crime, a crime unsubstantiated by all untainted professional evidence.

AND LET IT BE VERY CLEAR: the most cogent point is that the fraud of the voice recording fabrication is primal to the fraudulent conviction of a crime that NEVER HAPPENED, and the ensuing relentless cover-up of that fraud.

Furthermore, the State's own records testify to the

irrefutable truth that the scienter criminal acts continue, even by the conducting of this arbitrary proceeding that is also being held entirely without any lawful jurisdiction.

This wanton insistence of pigeon-holing this case into a debate over Privacy Act minutiae is, itself, a dangerously significant threat to fundamental American liberty.

How ironic and sadistic when the State calls for "balancing Public Safety and Privacy" when affirmation of the corrupted trial court would create dangerous precedent to enable governmental theft from private citizens, staging of made-up crimes, manufacturing of illegitimate evidence, and issuance of fraudulent convictions in the complete absence of legal jurisdiction.

For the State to cry of "Shielding of Criminal Acts" is despicable because this is the precise definition for their very own behavior. Indeed, how the scales of justice have been so savagely tipped. Can the Supreme Court, or any honorable tribunal in good and lawful conscience and respect for jurisprudence, possibly condone or excuse such unconstitutional policy? Let it not be so.

Respectfully Submitted on this 12th Day of May, 2017,

John Garrett Smith, Respondent Pro Se

6

STATE OF WASHINGTON } ss.
COUNTY OF CLARK
I, Scott G. Weber, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 6 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.
Signed and sealed at Vancouver, Washington this date: August 7, 2014
Scott G. Weber, County Clerk
By Bal Cloth Deputy

FILED
2013 DEC 10 PM 3:42
SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, vs. JOHN GARRETT SMITH, Defendant	No. 13-1-01035-6 MOTION AND DECLARATION TO AMEND INFORMATION

COMES NOW, Jennifer Nugent, Deputy Prosecuting Attorney, and moves the above Court for an Order Amending the Information filed June 6, 2013 in the above-entitled case. This motion is based upon the files and records herein and the declaration of Jennifer Nugent.

DATED this 15 day of December, 2013.

Jennifer Nugent, WSBA #36833
Deputy Prosecuting Attorney

STATE OF WASHINGTON)
: ss
COUNTY OF CLARK)

I, Jennifer Nugent, certify and declare as follows:

That I am a Deputy Prosecuting Attorney for the Clark County Prosecuting Attorney's Office and in that capacity have reviewed Clark County Cause No. 13-1-01035-6, State of Washington v. JOHN GARRETT SMITH.

The defendant was initially charged with Assault in the Second Degree (Domestic Violence). Upon further investigation and review, law enforcement developed probable cause for the crimes of Attempted Murder in the First Degree (Domestic Violence) and nine counts of

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

MJM

Domestic Violence No Contact Order Violation (Domestic Violence). Attached is the officer's Probable Cause statement.

Your declarant respectfully requests that the court issue an Order Amending the Information dated June 6, 2013, in State of Washington v. JOHN GARRETT SMITH, Clark County Cause No. 13-1-01035-6.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Vancouver, Washington on this 16 day of December, 2013

Jennifer Nugent, WSBA #36833
Deputy Prosecuting Attorney

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. JOHN GARRETT SMITH, Defendant.	No. 13-1-01035-6 ORDER AMENDING INFORMATION

THIS MATTER having come on regularly before the undersigned Judge of the above entitled Court, upon the Motion of the Plaintiff, State of Washington, for an Order Amending the Information dated June 6, 2013 and the Court now being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Information filed on June 6, 2013, in the case of State of Washington v. JOHN GARRETT SMITH, Clark County Cause No. 13-1-01035-6 be amended.

DONE IN OPEN COURT this ____ day of December, 2013.

THE HONORABLE SCOTT A. COLLIER
JUDGE OF THE SUPERIOR COURT

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

Ex. i pg 3 of 6

Presented by:

Jennifer Nugent, WSBA #36833
Deputy Prosecuting Attorney

Sean M Downs, WSBA# 39856
Attorney for Defendant

JOHN GARRETT SMITH
Defendant

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

ARRESTING OFFICER'S DECLARATION OF PROBABLE CAUSE

DEFENDANT: SMITH, JOHN GARRETT **V13-8172**
PRINT LAST FIRST MIDDLE

NOTE: When a defendant has been arrested for a new crime, probable cause must be established. In appropriate cases, please describe the property stolen or damaged, including its value, and how it was derived. In controlled substance cases, please list the type and weight of the drug involved, and the method by which it was field tested. In protection order/no contact violations, describe the specific condition that was violated and how the defendant knew of the order. If a defendant is arrested on a new charge and a warrant, probable cause for the new charge must be demonstrated. Failure to provide a statement of probable cause will result in the prisoner's release. Use an extra sheet if necessary.

The undersigned law enforcement officer states that the Defendant was arrested without a warrant on the date and time shown thereon for the crime(s) committed in Clark County, Washington based on the following circumstances. The reverse of this sheet is hereby incorporated by reference.

My information was derived from V1: Sheryl S. Smith W1: Skylar Williams S1: John Garrett Smith (goes by Garrett)

My investigation revealed the following:

As a detective with the Vancouver Police Department Domestic Violence Unit, I completed follow up investigation on an assault against Sheryl S. Smith by her husband; John Garrett Smith (goes by middle name of Garrett). The assault occurred on June 2, 2013 at 14607 SE Rivershore Dr , Vancouver, WA.

On 6/2/13, Sheryl Smith called 911 to report that she was assaulted by Garrett and explained to officers that Garrett punched her in the face several times. The investigation showed Sheryl was knocked unconscious for several minutes and by the time she came around, both of her eyes were swollen shut. From follow up interviews, Sheryl stated to officers that she recalls being punched in the face by Garrett, strangled by Garrett to the point of not being able to breathe, and then being punched again in the face by Garrett. Sheryl's medical records show that she suffered a broken nose and a concussion from the assault. According to Sheryl's care providers, her case was treated as life threatening due to the extent of her injuries, the mechanism of injury and because the injuries were concentrated on her head and face. Sheryl stated to me that she believed Garrett was trying to kill her when he assaulted her and that when she regained consciousness, she had the feeling that if she did not immediately call 911 for help, she would die. Since June, Sheryl has been hospitalized several times due to complications from her injuries to include surgery on her back and extensive physical therapy. Sheryl is still suffering from Post-concussion syndrome.

Skylar Williams, Sheryl's 18 year old daughter, was at the residence prior to the assault and left the residence for about an hour. When she left, the only people present were Garrett and Sheryl. When Skylar returned home she discovered her mother badly beaten and on the phone with 911, reporting that Garrett was responsible for her injuries.

Garrett was located leaving the family home about 3 hours after the assault. Post Miranda, Garrett stated on two separate occasions that he did not assault Sheryl at all and even stated that he remembered her standing upstairs near the second floor banister when he left the residence and she was uninjured at that time. During my interview with Garrett, post Miranda, he asked several times and very specifically if Sheryl was 'going to make it' and 'is she going to be ok'.

On June 2, 2013, while at the residence after the assault, Skylar located a cell phone which she knew belonged to Garrett. Skylar took the phone with her to the hospital and provided it to officers that were further interviewing Sheryl. Skylar advised there was a voice mail on the phone that sounded as if it recorded part of the assault against Sheryl by Garrett.

The phone was seized and pursuant to a search warrant signed by the Hon. Judge Osler, I completed a search of the contents of Garrett's phone. From this I located a voice mail message left from a phone call placed from the home phone line to Garrett's cell phone that appeared to have been recorded by accident. Through my investigation and the context of the statements on the voice mail message, it appears that Garrett had lost his cell phone and was attempting to locate it by calling it from the home phone and following the ringing to where the phone was.

The voice mail message is quite clear and it was easy to determine the recorded altercation was between Garrett and Sheryl Smith. Garrett yells loudly at Sheryl, accuses Sheryl of having an affair, calls her names, and asks Sheryl where his phone is multiple times. Sheryl can be heard calling Garrett by name, crying, telling Garrett to stop, and saying 'look what you did to me'.

At one point in the recording Garrett can be heard saying very clearly "I will kill you". Sheryl responds by crying and saying "I know". Shortly after this noises can be heard that sound like Garrett hitting/punching Sheryl. Just before the end of the recording there are several seconds of silence. Garrett can then be heard saying something similar to 'I think she stopped breathing'. However, Sheryl begins to yell once again and the recording ends.

Since his arrest, Garrett has continued to send letters to Sheryl Smith in violation of a current/valid/served no contact order, order number V138172, which was served personally on Garrett in open court. Sheryl has received these letters sent by Garrett to her post office box with the address of 13215 SE Mill Plain Bldg C8 Ste 231, Vancouver, WA. Sheryl Smith is the only person with access to this box and she obtained this box prior to her relationship with Garrett. On July 15, 2013 I met with Sheryl Smith and she turned these letters over to me. Sheryl has since communicated with me that there are additional letters that she wishes to turn over to me but has been unable to do so due to ongoing medical treatments, surgeries and hospitalizations.

In these letters Garrett often refers to Sheryl by name, addresses the letter to Sheryl, and discusses their reunification and their bond with God. He discusses their mutual business dealings and even his outstanding criminal cases to include this one and one in Multnomah County where he asks her to be a character witness on his behalf. Garrett also often signs the letters with his name or initials. The letters I have received to this date have the following post mark dates:

6/21/13;
6/26/13;
6/27/13 (two letters in one envelope);
6/28/13 (two letters in one envelope);
7/1/13;
7/1/13;
7/1/13;
7/3/13 (4 separate letters in one envelope to Sheryl and one to Skylar Williams and one to Jordan Williams);
7/8/13 (two letters in one envelope)

From my investigation I have developed probable cause to arrest John Garrett Smith for Attempted Homicide 1st degree; RCW 9A.32.030 and nine (9) counts of Violation of a No Contact Order; RCW 26.50.110.

The undersigned declares and certifies under penalty of perjury under the laws of the State of Washington that the preceding statement is true and correct to the best of his/her knowledge.

Signed this 10 day of DECEMBER 20 13 in Vancouver, Clark County, Washington.

Officer's Signature

1809
PSN

The Undersigned Judge/Magistrate/Commissioner hereby certifies that I have read or had read to me the above statement of probable cause to arrest and that I find probable cause to arrest is _____ established _____ not established (release defendant).

Signed this _____ day of _____, 20_____, in Vancouver, Clark County, Washington.

_____ Time: _____ a.m. / p.m.
Judge/Magistrate

Prebook Form – Revised 10/08/01 – 2 PA Forms Committee MUST authorize any changes to this form

Copies: White – P.A. Yellow – C.B.C. Pink – Arresting Officer

ORIGINAL

FILED

2013 JUL 19 PM 1:32

SCOTT G. WEBER, CLERK
CLARK COUNTY

District Court of Clark County

State of Washington

State of Washington plaintiff, VS John Garrett Smith Defendant(s)	**Search Warrant** 13-1-00003-2 mat 98

The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, rule 2.3, having been made to me this day by Vancouver Police Detective Sandra Aldridge, of the Domestic Violence Unit, that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, rule 2.3, Section (c) for the crime of Assault II DV, RCW 9A.36.021

You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown therefore, of the following described property, within **10 days** of the issuance of this warrant:

NOT TRUE — misleading (suppression of RCW 9.73 violation)

1. Apple iPhone found in the possession of John Garrett Smith, to be examined and for the recovery of data to include but not limited to identifying information for the phone itself such as SIM, ESN and IMEI numbers, contact lists, incoming and outgoing calls and text messages, graphic/image files in common formats such as JPG, GIF, PNG or in any other data format in which they might be stored, pictures, movies files, emails, spreadsheets, databases, word processing documents, Internet history, Internet web pages, newsgroup information, passwords, encrypted files, documents, software programs, or any other data files, whether in allocated or unallocated space on the media, whether fully or partially intact or deleted, that are related to evidence of the crimes of Assault II DV, RCW 9A.36.021.

Are on this date at the following location to be searched:

Said items are currently located at the Vancouver Police Department Evidence Facility located at 2325 West Mill Plain Blvd., Vancouver, WA. Upon authorization of this search warrant, these items will be transferred to the Domestic Violence Prosecution Center, 1101 Broadway St., Vancouver, Washington, 98661 for examination and analysis by qualified personnel.

Are located in the premises described above, and if you find same, or any part thereof, then bring same and items of identification to identify the residents and residence thereof before the Honorable District Court Judge Osler to be disposed of according to law.

This Search Warrant was issued 7/15/13 at 11:54am
by the Honorable Judge Kell Osler
Date and time of execution: 7/15/13 @ 1327 HRS
By Sandra Aldridge 1709

322
AS

Exhibit ii, P. 1/1