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Supreme Court No. 94208-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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STATE OF WASHINGTON,  
Respondent,

v.

RAY LENY BETANCOURTH,  
Petitioner.

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SUPPLEMENTAL BRIEF OF PETITIONER

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**Suzanne Lee Elliott**  
Attorney for Petitioner  
1300 Hoge Building  
705 Second Avenue  
Seattle, WA 98104  
(206) 623-0291

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**I.**  
**SUPPLEMENTAL STATEMENT OF THE CASE**

Betancourth hereby incorporates the statement of the case in his briefing filed in the Court of Appeals, Division III and his Petition for Review filed in this Court.

**II.**  
**SUPPLEMENTAL ARGUMENT**

A.     **CONST. ART. 1, § 7 FORBIDS THE NEW “EXCEPTION” TO THE WARRANT REQUIREMENT INVENTED BY DIVISION III**

Betancourth hereby incorporates his argument from his motion to reconsider in the Court of Appeals, Division III and his Petition for Review filed in this Court. Counsel can find no recently filed caselaw that would alter the arguments made in that briefing.

Betancourth submits the following arguments based upon the State’s Answer to his Petition for Review. In its Answer the State discusses the “independent source doctrine.” Answer at 3-4. The Court of Appeals specifically held that the “independent source doctrine, under its stated terms, does not apply in this appeal.” Slip Opinion at 43. The State did not cross-petition regarding this finding, and thus, this Court should disregard any argument on this issue.

Further, the State fails acknowledge that all its citations rely on an analysis of the Fourth Amendment and the federal exclusionary rule. The

State fails to distinguish the Art. 1, § 7 jurisprudence cited to by Betancourt in his pleadings in the Court of Appeals and in his Petition for Review.

Given the significant difference between the Fourth Amendment and article I, section 7, application of an “invalidity correction corollary” based upon the Third Circuit’s Fourth Amendment analysis is simply wrong. The State Constitution prohibits this Court from retroactively and hypothetically correcting the errors of the police at the expense of a defendant’s right to keep his private affairs undisturbed. The Court’s adoption of this doctrine is simply a guise for importing a “good faith” or “reasonableness” analysis into Const., Art. 1, § 7. This Court has held that those doctrines do not apply to the State Constitution.

Therefore, if a police officer has disturbed a person’s “private affairs,” we do not ask whether the officer’s belief that this disturbance was justified was objectively reasonable, but simply whether the officer had the requisite “authority of law.” If not, any evidence seized unlawfully will be suppressed. With very few exceptions, whenever the right of privacy is violated, the remedy follows automatically.

*State v. Afana*, 169 Wn.2d 169, 180, 233 P.3d 879 (2010).

Finally, the State argues that requiring the officers to serve the valid warrant and get a new set of documents is “senseless.” But compliance with the warrant requirement in Art. 1, § 7 is not a technicality

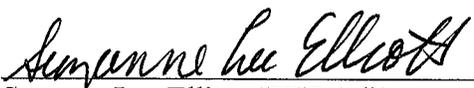
that can be discarded in favor of expediency. Holding the police to the requirement of the State Constitution promotes respect for the law and the privacy rights of Washington citizens. The idea that state warrant requirements are “overly technical” finds no support in Washington’s constitutional jurisprudence.

**III.  
CONCLUSION**

Because the documents were obtained without authority of law, they should have been suppressed. The introduction of these documents should be prohibited at any retrial of the murder count. And because the unconstitutionally seized records were introduced to support the assault charge, this Court should reverse that count as well.

DATED this 30 day of October, 2017.

Respectfully submitted,

  
\_\_\_\_\_  
Suzanne Lee Elliott, WSBA #12634  
Attorney for Ray Betancourth

**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I served by email  
where indicated, and by United States Mail one copy of this brief on:

Tamara Hanlon  
Yakima County Prosecutor's Office  
128 North 2nd Street  
Yakima County Courthouse, Room 329  
Yakima, Washington 98901  
Tamara.hanlon@co.yakima.wa.us

Mr. Ray L. Betancourth #376293  
Washington State Penitentiary  
1313 N. 13th Avenue  
Walla Walla, WA 99362-8817

OCTOBER 30, 2017  
Date

Christina L. Alburas  
Christina L. Alburas, Paralegal

**LAW OFFICE OF SUZANNE LEE ELLIOTT**

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**Filing on Behalf of:** Suzanne Lee Elliott - Email: suzanne-elliott@msn.com (Alternate Email: suzanne@suzanneelliottlaw.com)

Address:  
705 Second Avenue  
Suite 1300  
Seattle, WA, 98104  
Phone: (206) 538-5301

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