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1. GAHAGAN'S RIGHTS UNDER ARTICLE 1, SECTION 7 WERE VIOLATED AS A RESULT OF THE ILLEGAL STOP, ARREST AND SUBSEQUENT SEARCH OF THE VEHICLE.

a. The tactics and force employed by the police during the initial inception and stop of the vehicle exceeded that of an investigatory stop, but rather, constituted an immediate arrest unsupported by probable cause.

The state contended in trial that their evidence was fruit of a reasonable and justified investigatory stop or "Terry Stop." In State v. Williams, the court used a three prong test when "determining whether an interference with liberty is so substantial that its reasonableness depends upon probable cause."

1.) the stop's purpose, 2.) the amount of physical intrusion upon the suspects liberty and 3.) the length of time that the suspect is detained.
Williams, 102 Wa 2d 733, 740, 689 P. 2d 1065

First, The police had no articulable facts or corroboration of criminal activity, "did not know what crime, if any" they were dealing with (Appendix 1, pg 1), and were receiving "3rd party information" (Appendix 2). Therefore the police could not have had a well founded suspicion to justify any sort of stop. Without articulable facts, corroborative observation of criminal activity or something to suggest the informants reliability, any alleged purpose or reason for the stop would be unreasonable. See State v. Sieler, 95 Wn. 2d 43, 48-49, 621 P. 2d 1272 (1980).

Further, the amount of physical intrusion upon Gahagan's liberty and the length of the detention was clearly unreasonable because the state cannot justify the initial inception and stop of the vehicle. (see and consider also section "b" of this issue)

Other courts considered the following factors when determining whether an investigatory stop constituted an arrest and was therefore illegal. Any one of which, if present, could constitute arrest. See Florida v. Bostick, 501 U.S. 429, 437, 111 S. Ct. 2382, 115 L.Ed 2d 389 (1991).

- 1) The number of officers present. Id.
- 2) Whether weapons were displayed. U.S. v. Alvarez, 899 F. 2d 833, 838 (9th cir 1990). U.S. v. Stricker, 490 F.2d 378, 380 (9th cir 1974).
- 3) Whether an individual has been restricted or handcuffed to restrict his freedom of movement. U.S. v. Bautista, 684 F. 2d 1286, 1289 (9th cir 1982)
- 4) Whether the officers tone or manner was authoritative, so as to imply that compliance would be compelled, and departure from the scene was not considered a realistic alternative. State v. Vandover, 63 Wn. App 754, 822, P. 2d 784 (1992). See also Florida v. Bostick, 501 U.S. at 437.

- 5) The presence of emergency lights or sirens. State v. Vandover, 63 Wn. App 754, 822, P. 2d 784 (1992).
- and 6) Whether the encounter occurred in a public place or a non public setting. Florida v. Bostick, 501 U.S. at 437.

The present case shows forceful and intrusive conduct that constitutes an arrest as intended by article 1, section 7 of the Washington Constitution.

Several units were present at the scene, 5-10 squad cars [RP 215], and at least 13 officers provided reports detailing their participation. In U.S. v. Ceballos, 654 F. 2d 177 (2nd cir 1981), the presence of seven units was sufficient to constitute an arrest and intrusion upon constitutional rights.

Weapons were displayed by several officers and pointed at the vehicle and suspects before ordering them out with their hands raised. [RP 152, 180, 203]

All occupants were then handcuffed and taken into custody by police prior to the vehicle being searched or the occupants being questioned. [RP 203]. "In determining the severity of the intrusion and the aggressiveness of the police action we have stated handcuffing substantially aggravates the intrusiveness of an otherwise routine investigatory detention and is not part of a typical terry stop." U.S. v. Bautista, 684 F. 2d (1982) at 1289.

Here, the officers tone and manner was clearly authorative. The occupants were ordered out of the car at gunpoint with their hands raised, commands were given both verbally and over the squad cars "PA". [RP 152-53, 216].

The encounter ocured near a high traffic public intersection close to highway 99 in Everett Therefore not only was infringement upon Gahagan's privacy an issue but also the possibility of public embarressment accompanied the stop.

Considering these factors, the stop of the vehicle was clearly in excess of any reasonable investigatory detention, constituted immediate arrest and was therefore illegal because the informants tip was insufficient to establish probable cause.

b. The police could not have established probale cause or well founded suspicion to stop the car because the informant's tip lacked sufficient indicia of reliability.

Although probable cause may be lacking, police may briefly detain and question an individual if they have a well founded suspicion based on objective facts that he is connected to actual or potential criminal activity. State v. Sieler, 95 Wn. 2d 43, 621 P. 2d 1272 (1980), See also Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 20 L. Ed. 2d. 889 (1968). But an informant's tip cannot constitutionally provide police with such a suspicion unless it possesses sufficient "indicia of reliability." State v. Lesnick, 84 Wn. 2d 940, 943, 530 P. 2d 243 (1975).

The reliability of an informant's tip is not established by conformation of information which is merely descriptive and does not suggest criminal activity. Sieler, 95 Wn. 2d at 43.

There is nothing in this case to suggest the informant's tip possessed a sufficient indicia of reliability.

Indicia of reliability requires: 1) knowledge that the source of the information is reliable, and 2) a sufficient factual basis for the informant's tip or corroboration by independent police observation. Sieler, 95 Wn. 2d, 47-49.

The state cannot provide anything to suggest the informants were reliable and cannot provide corroborative observation suggesting the presence of criminal activity or that these anonymous informants gathered their information in a reliable fashion or some objective measure of reasonableness. See State v. Sieler, 95 Wn. 2d 48-49; see also State v. Lesnick, 84 Wn. 2d 940 944, 530 P. 2d 243 (1975).

The sole fact that the informants had fled the scene with the knowledge that the police were on their way [appendix 1, pg 1] strips the veneer from their credibility and reliability. Similarly the informants fleeing the scene shows they faced no consequences if they had fabricated their story and could not provide any corroboration to police about any details surrounding the event or criminal activity that they may have witnessed. Nor could the police examine the demeanor of the informants to see if they were under the influence of drugs or alcohol or were unreliable for any other reasons.

In Sieler, the court relied upon the three Lesnick criteria to determine whether a forcible stop involving a tip is reasonable:

"While the police may have a duty to investigate tips which sound reasonable, 1) absent circumstances suggesting the informant's reliability, or some corroborative observation which suggests either 2) the presence of criminal activity or 3) that the informant's information was obtained in a reliable fashion, a forcible stop based solely upon such information is not permissible."
Sieler, 95 Wn. 2d at 47

The state cannot meet any of these criteria.

First, No circumstances suggested the informant's reliability. They fled the scene after being notified the police were on their way, left no contact information, names, or specific details about the event, merely a description of a vehicle. [appendix 1, pg 1]: An anonymous informant's accurate description of a vehicle is "not such such corroboration or indicia of reliability" which would provide the police with a well founded suspicion to justify an investigatory detention. Sieler, 95 Wn. 2d at 47.

As for Lesnick's second criterion, the police did not observe any details, conduct, suspicious or criminal activity that would corroborate the informant's tip. Nor could the informant provide any specific details for the police use to corroborate criminal or suspicious activity.

Lastly, the state cannot satisfy Lesnick's third criterion. "Police observation of a vehicle which substantially conforms to the description given by an unknown informant does not constitute

sufficient corroboration to indicate that the informant obtained his information in a reliable fashion." Sieler, 95 Wn. 2d 49-50. Nor can the state contend that the "good samaritan" following the vehicle obtained his information in a reliable fashion. [appendix 1, pg 1]. He witnessed no criminal activity and was merely following the vehicle that was suspected to be involved in the event after overhearing the fleeing anonymous informants. This "unkown/uninvolved witness", [appendix 1, pg 1], was just that, unkown to police, and uninvolved in the situation, giving him no way to obtain his information in a reliable fashion.

Even considering all circumstances known and articulated by the police, Detective Hacker, a responding officer admitted "The information responding officers received was random and incomplete making it difficult for responding officers to know what the true nature of the call was"..."It was also unkown what crime, if any, we were dealing with." [Appendix 1, pg 1] (emphasis added).

Therefore it is by no conceivable manner that the tip and informant's should have been relied upon to justify the stop.

c. All fruits of the stop are inadmissible and must be suppressed.

The police could not have formed a well founded suspicion of criminal activity by the defendants; making the initial stop illegal and therefore the search of the vehicle improper.

"All evidence obtained as a result of an unlawful seizure is inadmissible." State v. Reichenbach, 153 Wn. 2d 126, 135, 101

P. 3d 80 (2004). Thus all evidence obtained as a result of the stop must be suppressed.

Gahagan respectfully requests that this court reverse his convictions and order suppression.

2. THE ASSAULT 2 AND ATTEMPTED ROB 1 MERGE
BECAUSE ROBBERY WAS THE OBJECTIVE INTENT
DURING BOTH CRIMES AND THE ASSAULT WAS COMMITTED
IN AN ATTEMPT TO ROB DURAND.

The State may bring multiple charges arising from the same criminal conduct in a single proceeding State v. Michielli, 132 Wash.2d 229, 238-39, 937 P.2d 587 (1997). However, state and federal constitutional protections against double jeopardy prohibit multiple punishments for the same offense. State v. Vladovic, 99 Wash.2d 413,422,662 P.2d 853 (1983); Albernaz v. United States,450 U.S. 333, 101 S.Ct. 1137, 67 L.Ed.2d. 275 (1981); see CONST. art.1, 9("No person shall be... twice put in jeopardy for the same offense."); U.S. CONST. amend. V (same). Within constitutional constraints the legislature has the power to define criminal conduct and assign punishment to it. State v. Calle, 125 Wash. 2d.769,776,888 P.2d 155 (1995) (recognizing rape and incest as seperate offenses). "Where a defendant's act supports charges under two criminal statures, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent,the charged crimes constitute the same offense." State v. Freeman,153 Wash.2d at 771,108 P.3d 753 (2005) (quoting In re Pers. Restraint of Orange, 152 Wash.2d 795,815,100 P.3d 291 (2004)).

Gahagan contends, that in light of the facts of his case, the legislature did not intend separate punishments for his attempted first degree robbery and second degree assault because the assault was committed to facilitate the robbery on Durand.

The states witnesses as well as the prosecutor support the contention that the assault on Pearson was used to try to complete the robbery on Durand:

Prosecutor: Now, do you remember whether that voice in the back that was saying "Get in the car" was directing that order to you or to Devin or do you remember?

Brixey: I didn't, at the time, I didn't know. I thought it was to Devin or to both of us. I didn't know if--I really didn't think it was just to me or anything.

[RP 86]

Prosecutor: Okay, what about the people were doing or saying in the seat that caused you to be scared?

Durand: I recall hearing, "Devin, get in the car." I--yea that made me pretty scared, you know.

Prosecutor: Based on the threatening manner of speech, did you make some assumptions as to what these individual or individuals wanted?

Durand: yes

Prosecutor: what was that?

Durand: My money and my drugs, whatever.

Prosecutor: Okay, another rip-off?

Durand: yeah.

[RP 127]

Prosecutor: Other than yelling at Devin to get into the car, was there any other commands or threats made at that point?

Pearson: Not untill Mallory and Devin left the car.

Prosecutor: When Devin was being ordered to get into the vehicle, was it being asked in a nice polite fashion like we're talking here today?

Pearson: No.

Prosecutor: How was Devin being ordered into the car?

Pearson: That if I didn't--that if he didn't get in the car, that they would kill me.

Prosecutor: And you have a gun to your head at this point?

Pearson: Yeah, from the guy directly behind me.

[RP 234]

Prosecutor: They're [Gahagan and Koppel] going to use the gun to her head to attempt to force Durand to do something they want him to do: get in the car so they can rip him off. [emphasis added] [RP 467]

It is noteworthy that the prosecutor states in closing argument that Gahagan and Koppel's objective intent for assaulting Pearson was to rob Durand. In State v. Valdez the court merged the assault and attempted robbery after the trial prosecutor stated in the closing argument that "Valdez's assault of Meza [was] one of the substancial steps in the attempted robbery in the first degree." See State v. Valdez, No.35085-8-2 (Wash.App Div.2, 2007)

Although all that is needed to commit attempted first degree robbery is proof of intent and a substancial step toward carrying out that intent. The prosecutor's comments showed that robbing Durand was the objective intent behind both crimes. Nor can the state argue that because there were, two victims that the crimes cannot merge. See State v. Kier, 164 Wa.2d 798,808,194 p.3d 212 (2008)

In State v. Dorfman the appellate court merged Dorfman's attempted robbery 1 and assault 2 while armed with a deadly weapon because it was reasonable that Dorfman comitted the assault in attempt to rob Mr. Karas. See State v. Dorfman No. 24315-0-3 (Wash App. Div 3, 2006)

In the present case, because the assault occured while the attempted robbery was still in progress and the assault was clearly used to facilitate the robbery; any rational trier of the fact could find that Gahagan and Koppel used the assault on Pearson in an attempt to rob Durand beyond a feasonable doubt.

Therefore Gahagan's convictions must merge.

3. THE TRIAL COURT ABUSED ITS
DISCRETION BY DENYING GAHAGAN'S
MOTION FOR A MISTRIAL BASED ON
THE JURY SEEING HIS TRIAL CLOTHES
BEING BROUGHT THROUGH THE
COURTHOUSE.

During the state's third day of trial Gahagan's defense counsel made a record of the following issue:

The Court: I understand there was something to put on the record.

Ms. Lopez de Arriaga: Yes, your honor. The defense would like to move for a mistrial.

[RP 170]

--we went up the elevator today with one juror who was looking at us carrying the clothes (Gahagan's suit) even though we came early. And then as we went through the metal detectors, two other jurors watched as--we tried to hide the clothes in a bag. It fell out of the bag as they were taking them out at the metal detector and one of the jurors was being very inquisitive and staying close by..(emphasis added)

And so we believe our client has a right to you know, for the jury to believe he's not in custody, and I think that's been somewhat comprimised.

[RP 170-71]

The court subsequently denied the motion; concluding it was "a leap" to find resulting prejudice from the jury's exposure to Gahagan's clothing he would be wearing that very day.

[RP 172]

It has been held reversible error in the past when courts allow a jury to see a criminal defendant shackled or in "prison garb."

In the present case, although no shackles or prison garb was seen by the jury, any juror could draw the inference that Gahagan was in fact in custody by seeing his defense counsel bringing his trial clothing to the court house and conclude that Gahagan was a security risk or safety concern for the jury or the public. Counsel's obvious attempt to conceal the clothing from the jury only furthers the likelihood that the jury was influenced by the situation.

Although defense counsel's motion may have been premature and perhaps should have first requested that the jury be questioned as to the impact of the situation on their impartiality; the trial court still should have sua sponte held an interrogation of the jurors before it decided to deny the motion for mistrial. Therefore it was an abuse of discretion to deny the mistrial motion when prejudice was ultimately undetermined.

But should this court determine that defense counsel should have requested an interrogation of the jurors; then both prongs of the ineffective assistance of counsel test have thus been met.

Because the trial court abused its discretion and or counsel was ineffective, Gahagan's convictions must be reversed.

4. INEFFECTIVE ASSISTANCE OF COUNSEL

a. Standard of Review

To establish ineffective assistance of counsel, a defendant must show deficient performance and resulting prejudice. Strickland v. Washington, 460 U.S. 668, 687, 104 S. Ct. 2052 80L.Ed. 2d 674 (1984). Counsel's performance is deficient when it falls below an objective standard of reasonableness. State v. Stenson, 132 Wn. 2d 668, 705, 940 P.2d 1239 (1997). Prejudice occurs when, but for the deficient performance, there is a reasonable probability that the outcome would have differed. State v. Powell, 150 Wn App. 139, 153, 206, P.3d 703 (2009). There is a strong presumption that counsel is competent and provided proper, professional assistance. State v. Lord, 117 Wn. 2d, 829, 822, 882 P.2d 177 (1991). Deficient performance is not shown by matters that go to trial strategy or tactics. State v. Cienfuegos, 144 Wn.2d 222, 227, 25 P. 3d 1011 (2001).

b. Counsel's failure to request a continuance of the 3.6 hearing prejudiced Gahagan and denied him a fair trial.

The sixth amendment of the United States Constitution as well Article 1, Section 22 of the Washington Constitution guarantee a criminal defendant the right to confront adverse witnesses.

Prior to the 3.6 hearing the defense subpoenaed Officer Yeadon and several other officers who were expected to stipulate to the facts

regarding the stop and their reports the defense counsel was expecting to ask specific questions regarding the incident. The officers failed to appear at the 3.6 hearing. (Appendix 3 pg 1-2)

Without the officers appearance there would no way for the defense to question them and because the prosecutor relied upon Yeadon's report in the state's responsive 3.6 memorandum the right to confrontation applied.

i. Deficient Performance

When the right to confrontation had been implicated and it was clear the officers were not present, counsel should have requested a continuance so the officers could be secured and Gahagan's right to confrontation would thus be protected. But counsel failed to request a continuance or mention any potential violation of Gahagan's rights.

Any competent attorney would have recognized the jeopardy created by the absence of the officers, brought it to the courts attention and requested a continuance in order to secure the officers for testimony. Because Gahagan's counsel failed to request a continuance to secure the officers to testify their conduct fell below an objective standard of reasonableness and was thus deficient.

Nor can the state contend that it was a reasonable trial tactic or strategy to fail to request a continuance. It would be at no cost to Gahagan to request a continuance in order to protect his right to confrontation and the failure would be only detrimental to the defense's position at trial.

ii. Prejudice

Where the right to confront witnesses is violated, reversal is required unless the error was harmless beyond a reasonable doubt.

State v. Buss, 76 Wn. App 789, 887 P.2d 920 (1995)

It was necessary for counsel to be able to question the officers and for the court to consider their testimony to determine whether the stop was legal. The prejudice here is self evident, without the officers testimony Gahagan's right to confrontation was violated to the extent that the outcome of the suppression hearing could have differed had the officers been confronted and question.

Because Gahagan was prejudiced by his counsel deficient performance his convictions must be reversed.

And should this court conclude that Gahagan's counsel was not ineffective, than the trial court abused it's discretion by allowing Gahagan's constitutionally protected right to confrontation to be violated; requiring reversal of his convictions.

5. REQUEST FOR PERSUASIVE EFFECT

Gahagan respectfully requests that this court consider section "b" (beginning on page 4 of SAG) of his first ground for persuasive effect or additional authority when reviewing issue #2 in his attorney's opening brief. Gahagan also requests that the federal and out of state cases he cites "be accorded such a measure of weight and influence as they may be intrinsically entitled to receive." H.C. Black, *The Law of Judicial Precedents* 11 (1928) (quoted in R. Aldisert, *The Judicial Process* 778-779 (1976)).

6. CUMULATIVE ERROR

A defendant may be entitled to a new trial where errors cumulatively produced a trial that was fundamentally unfair. In re Personal Restraint of Lord, 123 Wn. 2d 296, 868 P. 2d 835 (1994). The cumulative error doctrine applies where there have been several trial errors, individually not justifying reversal that, when combined, deny a defendant a fair trial. State v. Greiff, 141 Wn. 2d 910, 929 10 P. 3d 390 (2000).

If any of the errors raised in this statement of additional grounds are determined to be harmless or not prejudicial, Gahagan requests that this court consider the issues in this S.A.G and the appellant's opening brief under the cumulative error doctrine.

B.

CONCLUSION

Based on the above argument, Gahagan respectfully requests that this court reverse or merge his convictions.

DATED OCTOBER_____, 2010

Camano Gahagan

Appellant

APPENDIX 1

Everett Police Department

FOLLOW-UP REPORT ORIGINAL NARRATIVE

INCIDENT Assault 1/ Robbery 1/ Kidnapping 1			CASE NUMBER DD08-28921		
ASLT1F <input type="checkbox"/> A <input checked="" type="checkbox"/> C	ROB1FH <input type="checkbox"/> A <input checked="" type="checkbox"/> C	KIDNAP <input type="checkbox"/> A <input checked="" type="checkbox"/> C	<input type="checkbox"/> A <input type="checkbox"/> C	<input type="checkbox"/> A <input type="checkbox"/> C	<input type="checkbox"/> A <input type="checkbox"/> C
INCIDENT RECLASSIFIED TO:			DATE OF RECLASSIFICATION		REPORT DATE: 12/29/2008
					RELATED CASE NUMBER(S)/W. S. P. CONTROL NO

On 12/29/2008 at 0516 hours Officers [redacted] Klocker and [redacted] Caldart were dispatched to the Top Foods Grocery store parking lot located at 1605 SE Everett Mall Way, Everett, Washington for what was initially reported as an unknown person in someone's vehicle. The vehicle was described as a white Dodge passenger car, Washington license 578XMS.

As the two initial officers were responding, dispatch updated the call saying that a Top Foods employee had gone to the parking lot to check on the person in the vehicle but the employee returned to the store saying that there was someone in the vehicle holding a gun to someone else's head. This update generated a larger police response to include a response from me to assist. The information responding officers received from dispatch was random and incomplete making it difficult for responding officers to know what the true nature of the call was.

As I was continuing to respond, Officer Klocker, who had arrived at Top Foods, advised over the radio that two subjects who were related to the call were last seen running S/B from the Top Foods parking lot towards the Days Inn Motel across the street on SE Everett Mall Way. One of the subjects was a male and one was a female. Officer Klocker further advised the white Dodge passenger car drove out of the Top Foods parking lot on to SE Everett Mall Way. At the same time this information was being provided to assisting officers by Officer Klocker, dispatch updated the call informing officers that an unknown/uninvolved witness, (described as a "good Samaritan" in the CAD text of the call), was following the suspect's vehicle on S/B 7th Ave SE. The witness continued to update the 911 call-taker of the suspect vehicle's direction of travel, which was last reported as W/B on 112th St. SW approaching Airport Rd.

I made a quick area check for the two fleeing subjects at the Days Inn Motel but when I did not find them I drove to the area of 112th St. SW and Airport Rd. to assist in detaining the vehicle. While I was responding dispatch updated the call informing officers that a Snohomish County deputy had located the suspect's vehicle at 112th St. SW and Airport Rd. Everett PD A/Sgt. [redacted] Sutherland was the first Everett PD unit to arrive to assist the Snohomish County deputy and they initiated a felony traffic stop on W/B 112th St. SW at Beverly Park Rd. I responded to assist with the felony traffic stop.

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Upon my arrival, officers and deputies who were on scene at the traffic stop had already removed the female driver of the vehicle and she was placed in my vehicle until the other occupants of the vehicle could be removed. The I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085.)

OFFICER SIGNATURE <i>M. Hacker</i>	AT EVERETT WASHINGTON	DATE 12/29/2008	FORCE USED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FLEEING YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
OFFICER NAME/NUMBER M. HACKER # 1117	UNIT 00335	APPROVED BY/PERS.NO. <i>[Signature]</i> 1130		
ARRIVAL CLEARANCE () ARR / A () ARR / J	UNFOUNDED () EXC / A () EXC / J	DISTRIBUTION: () PA () CPS () HD () ADMIN () DSHS () MH	() JUV () TRAF () DET () PAT	OTHER: LOGGED: DATE / INITIALS
<input type="checkbox"/> ENTERED RMS DATE / INITIALS	<input type="checkbox"/> ENTERED WACIC / NCIC DATE / INITIALS	<input type="checkbox"/> CLEARED WACIC / NCIC DATE / INITIALS	31	

female driver was later identified as Victim Laura Elaine [redacted] and she was the owner of the vehicle; the white Dodge passenger car. Pearson had informed officers that there were two males in the vehicle with a gun.

At first the two males were not compliant when ordered to exit the vehicle. However, they eventually complied. The first male removed from the rear passenger driver's side was identified as Suspect Robert Eric [redacted]. He was wearing all black, a knit cap, and he was limping due to a foot injury. [redacted] was ordered to remove his cap when he exited the vehicle. [redacted] complied and placed his knit cap on the roof of the Dodge. The second male removed from the rear passenger's side of the vehicle was identified as Suspect Camano Orion [redacted]. He was wearing all gray clothing. Both males were successfully detained in handcuffs and then in patrol cars. Snohomish County deputies went up the vehicle to clear it and verified there was no one else inside the vehicle.

I returned to [redacted] who was still detained in handcuffs in my vehicle. She was visibly upset but cooperative. [redacted] kept asking to smoke a cigarette because she was scared. At this time, her role in this incident was unknown so I did not allow her to smoke. (It was also unknown what crime, if any, we were dealing with.) Because [redacted] role was unknown, I told her the reason why she was being detained, as I knew it at that time, and told her that I wanted to hear what she had to say about her role in the incident. I advised [redacted] of her Miranda Rights by reading directly from my department issued Miranda Warning card, which I carry on my person while on duty. [redacted] told me she understood her rights and wanted to speak to me about what happened.

[redacted] told me she did not know the two suspects in her vehicle, [redacted] and [redacted]. She told me that she had driven to the Days Inn Motel on SE Everett Mall Way in her white Dodge passenger car to pick up her two friends, the two that were last seen running from the Top Foods to the Days Inn Motel and were never found. She identified her female friend as "Malory" and the male as Malory's boyfriend, whose name she was not sure of. [redacted] referred to Malory's boyfriend as either "Devon" or "Darren". (For the purposes of this report I will refer to Malory's boyfriend as Devon since that was the name she used more often than Darren when talking to me.)

[redacted] continued to tell me that when she picked up Malory and Devon they drove across the street to the Top Foods grocery store and parked in the parking lot. Pearson said she believed she locked her door but she does not believe Malory or Devon locked their doors. She said they went inside the Top Foods and made a purchase then all three walked back out to the car together. [redacted] said she entered the vehicle first through her driver's side door. Once she was inside the vehicle, she leaned over to the passenger's side to unlock the passenger's front door she assumed was locked. [redacted] said it was at this time [redacted] and [redacted] sat up in the back seat where they had been hiding. She said they had entered her vehicle and were lying in wait when she and her friends went into the store. [redacted] said [redacted] was directly behind her and he grabbed her hair with one hand while he held a handgun to her head with the other hand. She said both [redacted] and [redacted] were shouting at her things similar to, "Give us the money!" "Where's the fucking money?" "You fucked with the wrong people!" Again [redacted] said she did not know either suspect so she did not know what they meant by the comment, "You fucked with the wrong people." [redacted] said she noticed Malory and Devon run away from the vehicle as Malory shouted that she was going to call the police. She said at this time, [redacted] and [redacted] told her drive out of the parking lot. [redacted] said [redacted] held the gun to her head the entire time and forced her against her will to drive out of the parking lot. [redacted] also said both suspects threatened to kill her as she drove the vehicle. She said she was afraid the suspects were going to shoot her in the head at some point.)

Secondary dissemination of this document is not authorized

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085.)

OFFICER SIGNATURE <i>M. Hacker</i>		AT EVERETT WASHINGTON	DATE 12/29/2008	FORCE USED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FLEEING YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
OFFICER NAME/NUMBER M. HACKER # 1117		UNIT DD335		APPROVED BY: / PERS. NO. <i>[Signature]</i> 1130		
IBR CLEARANCE () UNFOUNDED () ARR / A () EXC / A () ARR / J () EXC / J		DISTRIBUTION: () JUV () TRAF OTHER: () PA () CPS () HD () DET () ADMIN () DSHS () MH () PAT			LOGGED: DATE / INITIALS	
<input type="checkbox"/> ENTERED RMS _____ / _____ DATE INITIALS		<input type="checkbox"/> ENTERED WACIC / NCIC _____ / _____ DATE INITIALS		<input type="checkbox"/> CLEARED WACIC / NCIC _____ / _____ DATE INITIALS		

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██████████ said as she drove the vehicle she followed the suspect's directions on where to drive. She also said as she drove both suspect's kept asking her where her money was. ██████████ said she didn't have any money but her purse, which contained her wallet, was on the front passenger's seat next to her. She said ██████████ leaned forward over the front passenger's seat, picked up her purse, and removed it from her presence as he took it to the back seat with him. ██████████ said she could hear ██████████ going through her purse while asking her where her money was. ██████████ told me she didn't have any cash with her and she told ██████████ this.

As she continued to drive, ██████████ said she heard ██████████ tell ██████████ to, "Just shoot her." She said she the two suspects continued to talk about shooting her in the head, which caused her great fear for her life. ██████████ said at one point, (she could not recall what portion of highway they were on when this occurred), ██████████ said he was going to count to three and told ██████████ to shoot her when he counted to three. She said ██████████ began counting and when he said, "Three" ██████████ fired a single round from the handgun near the right side of her head and the round went through the front windshield. ██████████ said this greatly increased her level of fear and concern for her life. She said she was not injured by the round being fired near her head.

██████████ continued to drive and then suddenly noticed police lights behind her vehicle in her rear view mirror. She said she brought the vehicle to a stop as ██████████ and ██████████ discussed in the back seat what they were going to do. ██████████ said they spoke about just giving up. But they also contemplated running from the vehicle. She said at one point they told her she needed to tell the police they were friends and that nothing was wrong. ██████████ said she was able to exit the vehicle when she was ordered to by police.

After hearing ██████████ account of what happened, it was apparent she was the victim in this incident. I asked ██████████ if she would consent to a search of her vehicle for the gun or any other evidence and she agreed. She gave me verbal consent to search her vehicle. ██████████ said she wanted to pursue charges against ██████████ and ██████████ and she completed a written statement at the scene.

A search of the vehicle by Officer ██████████ Caldart yielded a Glock handgun, which had been concealed in the back seat of the vehicle. This was the area of the vehicle where ██████████ and ██████████ had been when officers stopped the vehicle and detained them. I went to look at the vehicle and I located a hole in the upper right portion of the windshield just as ██████████ had described. It appeared this hole was where the round fired by ██████████ from within the vehicle had exited the windshield. A bullet casing was also recovered from inside the vehicle.

██████████ and ██████████ had been taken to Everett PD's south precinct to possibly be interviewed by detectives. I drove ██████████ to the south precinct for a show up of the suspect's. Once there, I took ██████████ to an interview room where she could view ██████████ and ██████████ as they were brought out of a holding cell for her to identify. Upon seeing ██████████ and ██████████ ██████████ did not hesitate in identifying ██████████ as the suspect who had been in the back seat behind her, held the gun to her head and fired the round past her head into the windshield. She said ██████████ had been wearing the knit cap, which I described earlier in the report as the one he removed from his head and placed on the hood of her vehicle as he was being ordered from the vehicle. ██████████ also did not hesitate to identify ██████████ as the suspect who was in the back seat with ██████████ and as the suspect who told ██████████ to shoot her when he counted to three. She also confirmed that ██████████ was the suspect who removed her purse from the front seat and rummaged through it in the back seat where he was sitting.
Secondary dissemination of this document is not authorized

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085.)

OFFICER SIGNATURE <i>M. J. Hacker</i>		AT EVERETT WASHINGTON	DATE 12/29/2008	FORCE USED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FLEEING YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
OFFICER NAME/NUMBER M. J. HACKER # 1117		UNIT DD 335	APPROVED BY: PERS. NO. <i>[Signature]</i> 11/30		
IRR CLEARANCE () UNFOUNDED () ARR / A () EXC / A () ARR / J () EXC / J		DISTRIBUTION: () JUV () TRAF OTHER: () PA () CPS () HD ● DET () ADMIN () DSHS () MH () PAT		LOGGED: DATE / INITIALS	
<input type="checkbox"/> ENTERED RMS / / DATE INITIALS		<input type="checkbox"/> ENTERED WACIC / NCIC / / DATE INITIALS		<input type="checkbox"/> CLEARED WACIC / NCIC / / DATE INITIALS	

After making this identification of the suspects, at approximately 0639 hrs, I drove [REDACTED] to the Everett PD's north precinct at 3002 Wetmore Ave. to meet with detectives who were due to arrive for duty and interview [REDACTED]. Given that I was already over my regularly scheduled shift, I notified the day shift supervisor, A/Sgt. [REDACTED] Fifield that I needed a day shift officer to wait with [REDACTED] until the detectives arrived to interview her so I could go out of service. Officer [REDACTED] Rockwell was assigned the task of waiting with [REDACTED]. This ended my involvement with this case and I secured for the day.

Secondary dissemination of this document is not authorized

I certify, (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085.)

OFFICER SIGNATURE <i>Mahina Hacker</i>		AT EVERETT WASHINGTON	DATE 12/29/2008	FORCE USED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FLEEING YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
OFFICER NAME/NUMBER M. HACKER # 1117		UNIT 00 335	APPROVED BY / PERS. NO. <i>[Signature]</i> 1130		
JBR CLEARANCE <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> ARR / A <input type="checkbox"/> EXC / A <input type="checkbox"/> ARR / J <input type="checkbox"/> EXC / J		DISTRIBUTION: <input type="checkbox"/> JUV <input type="checkbox"/> TRAF <input type="checkbox"/> PA <input type="checkbox"/> CPS <input type="checkbox"/> HD <input checked="" type="checkbox"/> DET <input type="checkbox"/> ADMIN <input type="checkbox"/> DSHS <input type="checkbox"/> MH <input type="checkbox"/> PAT		LOGGED: _____/_____ DATE INITIALS	
<input type="checkbox"/> ENTERED RMS _____ / _____ DATE INITIALS		<input type="checkbox"/> ENTERED WACIC / NCIC _____ / _____ DATE INITIALS		<input type="checkbox"/> CLEARED WACIC / NCIC _____ / _____ DATE INITIALS	

APPENDIX 2

CALLER

I just heard the two people; uh, they told the cashier at...at Top Foods, they were gonna call 911; I talked to the guy who said that his friend was in the car, they got a gun...

DISPATCHER

Okay.

CALLER

...to her head and...

DISPATCHER

So is this...

CALLER

...took the car.

DISPATCHER

...third party information?

CALLER

Yes, kinda is, so I would go by the call you're getting from Top Foods. They're now going uh, on...they're back onto Southeast 7th and they are going southbound on 7th Avenue SE from Everett Mall Way.

DISPATCHER

Okay, again, I'm gonna tell you not to follow...

CALLER

I'm way back from 'em, I'm...I'm like hundreds of yards away...

DISPATCHER

What is your last name?

CALLER

...he's way up there. Gelzer, G-E-L-Z-E-R.

DISPATCHER

And your first name?

CALLER

John.

DISPATCHER

And your phone number?

CALLER

Uh, cell phone number is 425-269-8460.

APPENDIX 3

Pages 7-8 of verbatim report of proceedings

Oct 15, 2009

3.6 Hearing

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are able to detain and investigate without going through all the investigatory processes they might otherwise in a nonviolent situation. And I cited numerous cases to the Court to that effect.

The stop of an individual in a Terry situation, given the information that the police had that this is a gun to the head, whether it's an armed robbery or a kidnapping, that the police are well within their rights to do a felony stop procedure to protect themselves particularly, as it turns out, that exactly what the witnesses had indicated had occurred did.

I would ask the Court to deny the defense motion. And if the Court has any questions, I'm willing to answer them.

THE COURT: Okay. Rebuttal.

MS. HUNT: Yes, Your Honor. First of all, there is a little bit of dispute as to the facts. From what I understood and what I was led to believe was that we were actually stipulating to the facts in our report and what was in the police reports. The fact that counsel is talking about the facts are ones that have to relate to Officer Yeadon and Officer -- people that we actually had subpoenaed to be here and that he had said we were actually

1 stipulating to the facts.

2 So, first of all, I would like to know if in
3 fact just these facts are before the court along
4 with what we have, or ones that he can either put in
5 a declaration, because he supplied no declaration to
6 that. And we called off these particular officers
7 so that we could ask specific questions regarding to
8 those things. First, before I start to address Your
9 Honor, I would first like to know.

10 THE COURT: Well, it's your stipulation. I
11 don't know. What are you asking to do?

12 MS. HUNT: Well, the facts that we stipulated to
13 were the ones that we had given him. We didn't
14 receive his report until after.

15 MS. LOPEZ DE ARRIAGA: I think the 911 -- what
16 we stipulated to was the things that we supplied the
17 Court, our three reports, his 911 transcript, and
18 the CAD report.

19 MS. HUNT: Other than that, we stipulated to
20 nothing. And we had subpoenaed several officers to
21 go ahead and fill in those blanks. And at this
22 point he's kind of putting us in a position to not
23 be able to ask those officers those questions.

24 THE COURT: I don't know what facts you're
25 saying that you didn't stipulate to. Obviously, I

COURT OF APPEALS
 DIVISION 1
 OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 CAMANO GAHAGAN)
)
 Appellant.)

No. 64892-6-I
 AFFIDAVIT IN SUPPORT OF
 STATEMENT OF ADDITIONAL
 GROUNDS FOR REVIEW

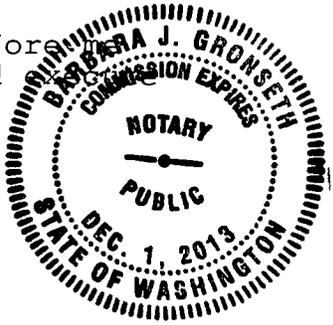
I, Camano Gahagan, declare under the penalty of perjury under the laws of The State of Washington that the statements and information within this foregoing statement of additional grounds are true and correct to the best of my knowledge and have been sworn below on this 25 day of October 2010.

)
) SS *Camano Gahagan*
)
 Camano Gahagan,
 Appellant

STATE OF WASHINGTON)
) SS
 CLALLAM COUNTY)

On the 25th day of October, 2010, the above did appear before and known by me to be the person herein, and did sign and this instrument of his own free will.

Barbara J. Gronseth
 NOTARY PUBLIC, in and for
 State of Washington, My commission expires: Dec. 1, 2013



IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION 1

CASE #
64892-6-1

CAMANO Orion GAHAGAN

Appellant,
vs.

State of Washington

Respondent.

PROOF OF SERVICE

2010 OCT 27 AM 10:38

I, CAMANO GAHAGAN, declare that, on
(Name of Inmate)

October 25, 2010, I deposited the following
(Month) (Day) (Year)

Statement of Additional Grounds
(Name of Documents)

or a copy thereof, in the legal mail system of Clallam Bay

Correction Center and made arrangements for postage to:

The Court of Appeals of the State of Washington Division 1
one Union Square 600 University St. Seattle wa. 98101-4170
Seth Aaron Fine - Attorney at Law Snohomish Co Pros. Ofc.
3000 Rockefeller AVE. Everett, wa. 98201-4060
Mindy Michelle Ater Washington Appellate Project
1511 3rd AVE Ste #701 Seattle, WA., 98101-3647

I declare under penalty of perjury under the laws of the State of Washington, pursuant to RCW 9A.72.085, and the laws of the United States, pursuant to Title 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this 25 day of October, 2010.

Dated at Clallam Bay, Wa.

Camano Gahagan

, Pro se

GR 3.1(a)(b)(c)

Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723