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No. 65933-2-1

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

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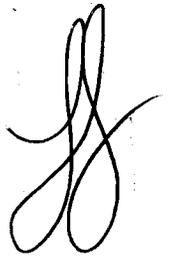
STATE OF WASHINGTON,

Respondent,

v.

BERNARD WOODS,

Appellant.



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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KING COUNTY

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. BECAUSE MR. WOODS'S ARREST WAS CONDUCTED WITHOUT AUTHORITY OF LAW, THE ARREST AND HIS SUBSEQUENT IDENTIFICATION BY POLICE OFFICERS MUST BE SUPPRESSED.

Article I, section§ 7 of the Washington Constitution provides:

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

A warrantless seizure is considered per se unconstitutional unless it falls within one of the few exceptions to the warrant requirement.

State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999).

It is undisputed that officers did not have a warrant to arrest Mr. Woods. Thus, the question becomes did the State established that his arrest fell within an exception to the warrant requirement? The State's reply chooses to ignore the question. Instead, the State dismisses the authority of law question as a purely statutory one, which the State contends Mr. Woods forfeited. Brief of Respondent at 7-8

But, Mr. Woods did object to the unlawfulness of his arrest contending he was "unlawfully stopped and thereafter unlawfully searched." CP 16. And yet the State failed to prove either the arrest or search were lawful. Despite the plain requirement in

Article I, 7, that the arrest be conducted with the authority of law the State responds that Mr. Woods presents a purely a statutory question and not a constitutional issue. The State's claim ignores the record, and misapprehends the authority of law requirement.

Because Mr. Woods objected to the lawfulness of the arrest he State was required to prove it was lawful. The record establishes Seattle police officers conducted an arrest outside their jurisdiction. The record does not establish that they had authority to do so under RCW 10.93.070. Thus, the record does not establish that the officers acted with the authority of law. State v. Eriksen, 166 Wn.2d 953, 969, 216 P.3d 382 (2009).

2. THE COURT MISCALCULATED MR. WOODS'S OFFENDER SCORE.

Mr. Woods has argued that the trial court miscalculated his offender score in light of the trial court's findings regarding his criminal history. The State responds by arguing it offered sufficient proof to support the score. Brief of Respondent at 17-18. But the State's response conflates two distinct aspects of sentencing - the State's proof and the trial court's findings. It does not matter what the State believes it proved, or even what the State may have in

fact proved. What matters is what the court found, and it is the court's findings which are at issue here..

RCW 9.94A.500(1) requires in relevant part

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record.

“Criminal history”

means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere . . . . The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration . . . .

RCW 9.94A.030(11)

The court's findings do not included any misdemeanors. CP 60-61, 67. Instead, the trial court's findings, establish that Mr. Woods had seven-year gap prior to the current offense. Id. As such, the trial court's legal conclusion - it's offender score calculation - is not supported by the court's findings.

B. CONCLUSION

For the reasons above, and those in Mr. Woods's initial brief, this Court must reverse Mr. Woods's conviction and sentence.

Respectfully submitted this 26<sup>th</sup> day of April, 2011.



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GREGORY C. LINK – 25228  
Attorney for Appellant

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	)	
Respondent,	)	
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v.	)	NO. 65933-2-I
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BERNARD WOODS,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, JOSEPH ALVARADO, STATE THAT ON THE 26<sup>th</sup> DAY OF APRIL, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] BRIDGETTE EILEEN MARYMAN KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] BERNARD WOODS 938127 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326-0769	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 26<sup>th</sup> DAY OF APRIL, 2011.

X \_\_\_\_\_ 

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