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

No. 30968-1

WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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JASON YOUKER, Petitioner

v.

DOUGLAS COUNTY, a municipal corp., and LISA  
WHITE, a single woman, and WILLIAM BLACK and JANE  
DOE BLACK, a marital community, Respondents

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APPELLANT'S REPLY BRIEF

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## I. SUPPLEMENTAL STATEMENT OF THE CASE

Under Section V Cause of Action – Invasion of Privacy, Mr. Youker alleged a violation of Art. 1, Section 7 as follows in Section 5.3:

Deputies White and Black intentionally entered Jason Youker's residence without a search warrant and without Jason Youker's express or implied consent in violation of Art. 1, Section 7 of the Washington State Constitution. CP 35-41. (p 5.3 of complaint)

See Appendix A

## II. ARGUMENT

A. Youker alleged a cause of action based on art. 1, section 7 of the Washington State Constitution.

In Fisher v. State ex rel. Dept of Health, 125 Wn.App. 869, 879, 106 P.3d 836 (Div. 3 2005), review denied 155 Wn.2d 1013 (2005). Ms. Fisher only presented the facts as an intentional personal tort. The Court of Appeals held that Ms. Fisher could not establish the element of "intent" necessary for

that personal tort.

The court noted, however, that “when the intruder is the government, the intrusion is a violation of article 1, section 7 of our constitution. It prohibits the government from disturbing any person in his or her private affairs or efforts without authority of law. Intent is not a factor.

Unlike the plaintiff in Fisher, Mr. Youker’s complaint alleged that the deputies actions violated art. 1, section 7 of the Washington State Constitution. Because the intrusion was made by the Douglas County deputies, part of a governmental agency, proof of intent is not required. See Fisher, 125 Wn.App. at 879.

The Court in Reid v. Pierce County reserved the issue of whether art. 1, section 7 provides a “civil cause of action.” Reid v. Pierce County, 136 Wn.2d 195, 214, 961 P.2d 333 (1998). The Court in Reid declined to address whether Article

1, Section 7 creates a private right of action, because it believed the plaintiff in that case could obtain adequate relief under the common law of invasion of privacy. Reid, 136 Wn.2d at 213.

B. The Deputies violated Youker's privacy before the Prosecutor decided to prosecute.

At the time the deputies entered Youker's residence, the prosecutor had not yet been contacted, nor had the deputies secured a warrant from any judge. Thus, with respect to the invasion of privacy violation, the Defendants cannot hide behind the argument that the emotional distress damages were "caused by the prosecutor's informed decision to prosecute."

The United States Supreme Court in Payton v. New York, 445 U.S. 573, 583-603, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) emphasized the importance of privacy interests regarding entry into a private home under the Fourth Amendment as follows:

....

(a) The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. To be arrested in the home involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home, which is too substantial an invasion to allow without a warrant, in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is present. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

The Washington State Supreme Court has analyzed Art.

1, Section 7 in the context of other civil lawsuits. See e.g., York v. Wahkiakum Sch. District No. 200, 163 Wn.2d 297, 178 P.3d 995 (2008) (holding that the granting of a summary judgment was error where a warrantless and random and suspicionless drug testing violates a student's right to privacy under Wash. St. Const. art. 1, section 7.)

### III. CONCLUSION

The court should reverse the trial court's entry of summary judgment on the issue of invasion of privacy and remand for trial.

DATED this 15<sup>th</sup> day of January, 2013.

By Julie A. Anderson

Julie A. Anderson, WSBA #15214

Attorney for Plaintiff Jason Youker

# **APPENDIX A**



1 Douglas County Sheriff's Department. On information and belief, Jane  
2 Doe Black is married to William Black.

3  
4 II. JURISDICTION AND VENUE

5 Jurisdiction is proper in Chelan County, as Chelan County is one of the two  
6 counties adjacent to Douglas County, pursuant to RCW 36.01.050.

7  
8 III. STATEMENT OF FACTS

- 9 3.1 On or about April 20, 2007, Jason Youker's ex-wife, JoAnn Youker, was  
10 being held at the Douglas County Sheriff's office on an arrest warrant.
- 11 3.2 While JoAnn Youker was in custody, she reported that her ex-husband,  
12 Jason Youker, had a rifle under his bed at his residence. Jason Youker  
13 was not allowed to be in possession of a firearm because of his status as  
14 a convicted felon.
- 15 3.3 Ms. Youker claimed that she knew the rifle was there because of contact  
16 she had had with Jason Youker.
- 17 3.4 At the time this report was made, Ms. Youker had a no-contact order  
18 against her which prohibited any and all contact between her and Jason  
19 Youker or his residence.
- 20 3.5 On information and belief, this no-contact order was part of the law  
21 enforcement database to which the Douglas County Sheriff's department  
22 had access.
- 23 3.6 Despite access to this information, Douglas County Sheriff's deputies Lisa  
24 White and William Black transported JoAnn Youker to Jason Youker's  
25 residence and obtained consent from JoAnn Youker to search Jason  
Youker's residence.

- 1 3.7 Douglas County Sheriff Deputies Lisa White and William Black entered the  
2 residence and were led by JoAnn Youker to a rifle located under the bed,  
3 along with a box of 30-30 ammunition.
- 4 3.8 Deputy White arrested Jason Youker on 4/21/07.
- 5 3.9 A no-contact order was entered, which prohibited Jason Youker from  
6 having contact with his son, Jetta Youker.
- 7 3.10 Jason Youker spent ½ day in jail. The charges were dismissed on or  
8 about August 6, 2007.
- 9 3.11 Douglas County officers failed to verify Ms. Youker's authority to consent  
10 to a search of Jason Youker's property prior to searching the residence.
- 11 3.12 Ms. Youker did not have mutual and joint access to the property, and was  
12 actually excluded from that residence due to the no-contact order.  
13 Therefore, the search of Mr. Youker's home was illegal. State v. Morse,  
14 156 Wn. 2d, 1, 8, 123 P. 3d 832 (2005).
- 15 3.13 Douglas County Sheriff's officers had no probable cause to conduct a  
16 search of Jason Youker's property, so the search and seizure of evidence  
17 therein was illegal, and the pursuit of criminal charges against him was  
18 malicious.
- 19 3.14 Those criminal charges in Douglas County were dismissed on the merits.
- 20 3.15 The same day the charges were dismissed, the Douglas County  
21 prosecutor referred the case to the federal prosecutor. Jason Youker did  
22 45 days in the Spokane County jail as a result of that referral.
- 23 3.16 Ultimately, the federal charges were dismissed on the merits and Jason  
24 Youker was released from jail.
- 25 3.17 All actions taken by Deputies White and Black occurred while they were  
actin within the scope of their duties as Douglas County Sheriff's Deputies,  
so Douglas County is vicariously liable for their acts and all causes of  
actions set forth herein.

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IV. CAUSE OF ACTION – MALICIOUS PROSECUTION – ALL DEFENDANTS

- 4.1 Paragraphs 1.1 through 3.17 are incorporated herein by reference as if fully set forth herein.
- 4.2 Deputies White and Black referred the charges to the Douglas County prosecuting attorney's office for prosecution, and Jason Youker was prosecuted as a result of the referral of charges with felon in possession of a firearm.
- 4.3 Such actions by Deputies White and Black were taken in reckless disregard for Plaintiff's rights and without probable cause.
- 4.4 Douglas County is vicariously liable for the actions of Deputies White and Black for their actions occurring while acting within the scope of their employment.
- 4.5 Deputies White and Black are also liable for their own actions taken without probable cause and in reckless disregard for Jason Youker's rights.
- 4.6 The Douglas County criminal case against Jason Youker was dismissed on the merits.
- 5.1 As a direct and proximate cause of the malicious prosecution, Jason Youker was wrongfully charged with a crime causing him to have lost income while he was in jail, loss of residential time with his son, loss of his rental property, loss of his personal belongings which were repossessed during his incarceration, emotional distress and humiliation in amounts to be proved at trial.

V. CAUSE OF ACTION – INVASION OF PRIVACY

- 5.2 Paragraphs 1.1 through 4.7 are incorporated herein by reference as if fully set forth.

- 1 5.3 Deputies White and Black intentionally entered Jason Youker's residence  
2 without a search warrant and without Jason Youker's express or implied  
3 consent, in violation of Art. 1, Section 7 of the Washington State  
4 Constitution.
- 5 5.4 Deputies White and Black knew or should have known that JoAnn Youker  
6 was excluded from Jason Youker's residence pursuant to a valid  
7 restraining order and her no authority to consent to their entry into Jason  
8 Youker's residence.
- 9 5.5 Deputies White and Black;s entry into the residence of Jason Youker  
10 without consent constituted an invasion into the sanctity of his home,  
11 which constituted an intrusion highly offensive and objectionable to a  
12 reasonable person.
- 13 5.6 As a direct and proximate result of this invasion of privacy, Jason Youker  
14 was wrongfully charged with a crime causing him to have lost income  
15 while he was in jail, incurred bail, loss of residential time with his son, loss  
16 of his rental property, loss of his personal belongings which were  
17 repossessed during his incarceration, emotional distress and humiliation in  
18 amounts to be proved at trial.

19 V. CAUSE OF ACTION – FALSE ARREST

- 20 6.1 Paragraphs 1.1 through 5.6 are incorporated herein by reference as if fully  
21 set forth.
- 22 6.2 Because Douglas County Sheriff Deputies White and Black had no  
23 authority to enter the residence of Jason Youker, the subsequent search  
24 of his residence was illegal and the firearm seized could not constitute  
25 probable cause for the arrest of Jason Youker. The unlawful arrest and  
seizure of evidence constituted an unconstitutional seizure under the  
Washington State Constitution, Article 1, Section 7.
- 6.3 As a direct and proximate cause of the unlawful arrest, was wrongfully  
charged with a crime causing him to have lost income while he was in jail,

1 loss of residential time with his son, loss of his rental property, loss of his  
2 personal belongings which were repossessed during his incarceration,  
3 emotional distress and humiliation in amounts to be proved at trial.

4 VII. CAUSE OF ACTION – FALSE IMPRISONMENT

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- 6 7.1 Paragraphs 1.1 through 6.3 are incorporated herein as if fully set forth  
7 herein.
- 8 7.2 Douglas County Sheriff's Deputies' arrest of Jason Youker resulted in  
9 imprisonment, which violated Jason Youker's right to liberty without legal  
10 authority.
- 11 7.3 As a direct and proximate cause of the false imprisonment, Jason Youker  
12 was wrongfully incarcerated, causing him to have lost income while he  
13 was in jail, loss of bail, loss of his rental property, loss of residential time  
14 with his son, loss of his personal belongings which were repossessed  
15 during his incarceration, emotional distress and humiliation in amounts to  
16 be proved at trial.

17 WHEREFORE, the Plaintiff requests the following relief:

- 18 1. General damages for pain, suffering, humiliation, emotional distress,  
19 separation from his son, and anguish in an amount to be proved at trial.
- 20 2. Special damages, including, but not limited to loss of property, attorney's  
21 fees for his criminal defense, bail money, loss of inventory from his  
22 business, loss of his rental homes, loss of residential time with his son,  
23 loss of earnings from self-employment, loss of personal belongings such  
24 as furniture and appliances, and other special damages to be proved at  
25 trial.
3. Such other and equitable relief as the court deems just and proper.

