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FILED

AUG 14 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By SO

SUPREME COURT OF THE
STATE OF WASHINGTON
Case No. _____

PETITION FROM THE WASHINGTON STATE COURT OF
APPEALS, DIVISION THREE
NO. 31361-1-III

FILED
AUG 20 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRF

STATE OF WASHINGTON,
Respondent,

v.

ONE 1999 FORD F350 DIESEL PICKUP TRUCK, AND A
REMINGTON MODEL 77, 7mm RIFLE

JOHN R. COON AND SABRINA K. COON

Petitioner

PETITION FOR REVIEW

Submitted by:

Anthony P. Martinez, WSBA #46392
1312 North Monroe, #140
Spokane, WA 99201
Telephone: 509-252-9167
Attorney for Petitioners

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I. IDENTITY OF PETITIONER

Petitioners, John and Sabrina Coon, married in the State of Washington, had seized for forfeiture one 1999 Ford F350 diesel pickup truck and one Remington Model 77, 7mm rifle by the Washington Department of Fish and Wildlife.

II. CITATION TO COURT OF APPEALS DECISION

Division III issued its published opinion in this case, No. 31361-1-III on July 17th, 2014. A copy of Division III's Opinion is attached at Appendix A.

III. STATEMENT OF THE CASE

A. Factual History.

Fish and Wildlife agents investigated a report of poaching on November 19th, 2011 in Ferry County. CP 32. The agents stopped a vehicle driven by John Coon, interviewed the occupants, took a tissue sample of what appeared to be blood on the truck, and responded to the suspected scene of the crime. CP 32-33. The agents inspected the scene, observed signs of hunting of a deer, and again interviewed John Coon when he returned. CP 33. Agent Weatherman interrogated John Coon and threatened forfeiture by indicating to him that he faced "closed season charges that could cost him his rifle and his vehicle." CP 39. Mr. Coon refused to make a statement. *Id.* The agent continued to attempt to coerce Mr. Coon into making a statement

by informing him that the State had the authority to seize his vehicle and rifle and that he “faced the possibility of losing both.” *Id.* When Mr. Coon continued to invoke his right to remain silent, he was arrested. *Id.* Two days later, Mr. Coon called to ask if he could have his truck back, and was told that he “would not get it back” and that he would hear from the WFDW “legal staff.” CP 43. Mr. Coon did not hear from WFDW until January 31st, 2012, when the department wrote that they were seizing the vehicle for forfeiture. CP 57. After Mr. Coon hired a lawyer and contested the forfeiture, the department wrote that on “...November 19th, 2011, Fish and Wildlife Officers seized *for forfeiture* to the State of Washington a 1999 Ford F350 diesel pickup and a Remington mod 77, 7mm rifle, Marline Model 336 .35 caliber.” CP 61.

B. Procedural History.

This case proceeded along the administrative track until May 2nd, 2012, when a petition for removal to Superior Court was filed. CP 1-7. On September 20th, 2013 the Coons filed a motion to dismiss the forfeiture proceeding on the grounds that the notice of forfeiture was not timely made. CP 12-15. A hearing was held on December 14th, 2012, and the court granted the Coons’ motion. CP 66-67.

The State filed a “motion for reconsideration”, and attempted to get the court to consider additional evidence. CP 68-73. The additional

evidence included a “property receipt” signed by Agent Weatherman which purports to take the vehicle as “evidence.” CP 78. The motion for reconsideration was denied, and a written order resulted. CP 110-114. The Coons, having prevailed in the case, asked for an award of attorney’s fees because the forfeiture was not substantially justified. CP 115-130. That motion was denied. CP 114. A timely appeal was filed by the State, and a timely cross-appeal was filed by the Coons on the denial of attorneys’ fees.

On July 17, 2014, Division III of the Court of Appeals published a decision in agreement with the State's position and reversed the trial court's decision pertaining to the construction of the wildlife forfeiture statute.

Appendix A.

IV. ISSUES PRESENTED

A. Does RCW 77.15.070¹ and RCW 77.15.094² permit the Washington Department of Fish and Wildlife to seize an item for evidence and, later, move to forfeit the seized item more than fifteen days after it was seized for evidence?

¹ Appendix B

² Appendix C

V. DISCUSSION

A. Basis for review under RAP 13.4.

As described below, this matter concerns issues of substantial state-wide public interest, thus qualifying for Supreme Court review under RAP 13.4(b)(4).

B. RCW 77.15.070 AND RCW 77.15.094 DOES NOT PERMIT THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE TO SEIZE AN ITEM FOR EVIDENCE AND, LATER, MOVE TO FORFEIT THE SEIZED ITEM IF SEIZURE FOR FORFEITURE OCCURS MORE THAN FIFTEEN DAYS AFTER THE SEIZURE FOR EVIDENCE.

In Washington State, forfeiture sought by a government agency is governed by statute. See RCW 77.15.070(2). "Every jurisdiction that has considered the question has held that the power to order forfeiture is purely statutory. State v. Alaway, 64 Wash. App. 796, 800, 828 P. 2d 591, 593 (1992)(citation omitted).

RCW 77.15.070(1) states in relevant part "[F]ish and wildlife officers . . . may seize without warrant . . . vehicles . . . or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule . . ." Furthermore, RCW 77.15.070(2) continues to state, "seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days

following the seizure, the seizing authority shall serve written notice of intent to forfeit property on the owner."

In this case, the WDFW seized the Coon's vehicle and rifle on November 19, 2011, because it had probable cause to believe the vehicle and rifle were used in violation of title 77. On January 31, 2012, 52 days later, the Coons received a letter informing them that WDFW would be forfeiting their vehicle and rifle. The notice of forfeiture occurred well after the 15-day notice requirement of RCW 77.15.070(2). WDFW envisioned forfeiture on November 19th, 2011. Agent Weatherman threatened forfeiture to elicit a confession from Mr. Coon. Additionally, we know that WDFW envisioned forfeiture on November 19th, because that is what their notice of forfeiture said.

To the contrary, the State argued and Division III of the Court of Appeals agreed that there was not a violation of the 15-day notice requirement³ because the property seized on November 19th, 2011 was for evidentiary purposes⁴ only; and therefore, did not trigger the notice for forfeiture requirement. However, interpreting both RCW 77.15.070 and RCW 77.15.094 in this fashion would lead to an absurd result. "A reading that produces absurd results must be avoided because it will not be presumed

³ See RCW 77.15.070(2)

⁴ See RCW 77.15.094

that the legislature intended absurd results." *Tingey v. Haisch*, 159 Wash. 2d 652, 664, 152 P. 3d 1020, 1026 (2007)(internal quotations omitted)(citations omitted).

Specifically, the State and the Court of Appeals would contend that WDFW could seize an item for evidence, hold that item for an indefinite amount of time, and when the inclination rises, then move to forfeit that item. However, construing the statute in that regard renders the forfeiture notice requirement meaningless. For instance, in this case, the Coon's property was "seized for evidence" in November and the notice for forfeiture was sent in January, 52 days later. When exactly did the "jurisdiction to begin forfeiture proceedings" begin? *See* RCW 77.15.070(2). If the statute is to be interpreted according to the State and the Court of Appeals, it began as soon as WDFW sent out notice of intent to forfeit in January. Essentially, the WDFW was able to toll the notice requirement until they were ready to send out notice of intent to forfeit; thereby, making the 15-day notice requirement of no consequence and providing WDFW with an unfettered discretion to forfeit property whenever WDFW wanted to.

While the case law is limited in interpreting the relationship between seizure for evidentiary⁵ purposes and seizure for forfeiture⁶ purposes in the

⁵ RCW 77.15.094

⁶ RCW 77.15.070

context of Title 77, we can see how two, other, similar statutes are implemented in the context of Title 69 in *State v. Alaway*. 64 Wash. App. 796, 828 P. 2d 591 (1992).

RCW 69.50.509⁷ governs the search and seizure of controlled substances. While there is not specific language establishing that the seizure is for evidentiary purposes only, such logic would follow since there is a complementary statute pertaining to seizure for forfeiture⁸ of property, similar to the statutes at issue here. Consequently, RCW 77.15.094 is nearly identical to RCW 69.50.509 with the exception that there's a distinction between the procedural requirements needed to seize⁹.

Additionally, RCW 69.50.505 is nearly identical to RCW 77.15.070 as well. RCW 77.15.070(2) states: "[I]n the event of seizure of property *under this section*, jurisdiction to begin forfeiture proceedings shall commence upon seizure." (Emphasis added). Similarly, RCW 69.50.505(3) states: "[I]n the event of seizure *pursuant to subsection (2) of this section*,

⁷ See Appendix D.

⁸ RCW 69.50.505; See Appendix E.

⁹ Under RCW 77.15.094 property can be seized *without* a warrant so long as WDFW has probable cause to believe a violation of Title 77 has occurred. Whereas, RCW 69.50.509 states property may only be seized pursuant to a valid search warrant establishing probable cause.

proceedings for forfeiture shall be deemed commenced by the seizure."

(Emphasis added).

In comparing the seizure statutes of Title 77 to the seizure statutes of Title 69, it would appear the procedure is the same. Namely, evidence may be seized for evidentiary purposes under a specific statute and subsequently, evidence may be forfeited under a separate statute. However, as the State conceded in *Alaway* there is 15-day notice requirement that is initiated by the initial seizure¹⁰. 64 Wash. App. 796, 800, 828 P. 2d 591, 593 (1992).

Specifically, in *Alaway*, law enforcement *seized for evidence*, pursuant to a warrant based on a finding of probable cause, materials used in the production of marijuana on October 6, 1988. *Id.* at 797. It was not until May 30, 1989, that law enforcement then moved for an order forfeiting the property. *Id.* Consequently, law enforcement conceded that it did not follow the statutory notice requirement for forfeiture. *Id.* at 800.

In this case, it is unclear why WDFW is arguing that it adhered to the 15-day notice requirement when their conduct is identical to that of the law enforcement in *Alaway*. 64 Wash. App. 796, 828 P. 2d 591 (1992).

Specifically, property was seized for evidence during the investigation.

Later, well past 15 days, law enforcement provided notice of intent to forfeit the seized property.

¹⁰ RCW 69.50.505(3).

C. Conclusion.

In conclusion, we would ask that the court accept this case for review.

DATED this 14th day of August, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony P. Martinez", written in a cursive style.

Anthony P. Martinez, WSBA #46392
Attorney for Petitioners
Law Office of Steve Graham
1312 North Monroe, #140
Spokane, WA 99201

Appendix A

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 31361-1

Title of Case: State of Washington, Dept. of Fish & Wildlife v. 1999 Ford F350 Pickup, Et al

File Date: 07/17/2014

SOURCE OF APPEAL

Appeal from Ferry Superior Court

Docket No: 12-2-00052-6

Judgment or order under review

Date filed: 12/14/2012

Judge signing: Honorable Allen C Nielson

JUDGES

Authored by Kevin M. Korsmo

Concurring: Michael Patrick Price

Laurel H. Siddoway

COUNSEL OF RECORD

Counsel for Appellant(s)

Michael Mackaman Young

Attorney General's Office

Po Box 40100

Olympia, WA, 98504-0100

Counsel for Respondent/Cross-Appellant

Stephen Thomas Graham

Law Office of Steve Graham

1312 N Monroe St Ste 140

Spokane, WA, 99201-2623

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

STATE OF WASHINGTON,)	
DEPARTMENT OF FISH AND)	No. 31361-1-III
WILDLIFE,)	
)	
Appellant/Cross-Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
ONE 1999 FORD F350 DIESEL PICKUP)	
TRUCK, AND A REMINGTON MODEL)	
77, 7mm RIFLE,)	
)	
JOHN R. COON AND SABRINA K.)	
COON,)	
)	
Respondent.)	

KORSMO, J. — The Department of Fish and Wildlife (DFW) appeals from the dismissal of this forfeiture action, arguing that the statute allows it to seize an item for evidence and, later, move to forfeit the item due to its use in a crime. We agree and reverse and remand this action.

FACTS

A large whitetail buck was shot out of season in a field near highway 395 in Ferry County. A tip led DFW to investigate the matter on November 19, 2011. The investigation led DFW to suspect that the deer had been shot by Sabrina Coon and transported in John Coon's 1999 Ford F350 truck. Officers seized the truck as well as two rifles, a pair of boots, a buck knife with sheath, and the deer. The seizure notice given to the Coons indicated that the items had been seized for evidentiary reasons.

DFW had deoxyribonucleic acid (DNA) testing performed on blood found in the pickup truck and the knife, as well as on the deer and on deer guts found in the field. The testing results were received January 27, 2012. They confirmed that the blood samples and the guts came from the seized deer. DFW then issued a "Notice of Intent to Forfeit" on January 31, 2012. It reads (in part):

As you are aware, on November 19, 2011, Enforcement officers from the Washington Department of Fish and Wildlife (WDFW) seized for evidence your 1999 Ford F350 Diesel pickup, Remington Model 77 7mm rifle, Marlin Model 336 .35 cal. Remington rifle, and Cabelas size 11EE boots, because they allege that you committed Unlawful Hunting of Big Game Second Degree, RCW 77.15.410(1).

Clerk's Papers (CP) at 56.

The letter also informed the Coons that DNA testing had confirmed that all of the samples matched. "Therefore, this is your notice that WDFW is seizing your truck and your Remington Model 77 7mm rifle for forfeiture." CP at 56.

The Coons removed the matter to Ferry County Superior Court and moved to dismiss the action on timeliness grounds. The trial court ultimately agreed, ruling that the notice of forfeiture was untimely as it had been given more than 15 days after the seizure. The court ordered the truck be immediately returned to the Coons, but permitted the guns to be retained pending a charging decision from the prosecutor.

DFW moved for reconsideration. The court denied the motion and rejected DFW's construction of the statute, which it feared would lead to open-ended forfeiture proceedings. The Coons sought attorney fees for prevailing in judicial review of an agency action. The court also denied the request, concluding that DFW had been substantially justified in its actions. DFW then timely appealed to this court. The Coons cross appealed the attorney fee ruling.

ANALYSIS

The sole issue presented by this appeal concerns the construction of the wildlife forfeiture statute, RCW 77.15.070, and the accompanying seizure authorization statute, RCW 77.15.094. Since we conclude that the forfeiture notice was timely given, we do not address the cross appeal issue.¹

¹ RCW 4.84.350(1) permits parties that obtain relief on a significant issue in a review of an administrative action to recover reasonable attorney fees. As the Coons have not prevailed, there is no basis for a fee award.

The purpose of statutory construction is to effectuate the intent of the legislature. *Roberts v. Johnson*, 137 Wn.2d 84, 91, 969 P.2d 446 (1999). Statutes that are clear and unambiguous do not need interpretation. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). However, when interpretation is necessary, the legislation “must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Appellate courts review questions of statutory interpretation *de novo*. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

The forfeiture statute provides in limited part:

Civil forfeiture of property used for violation of chapter. (1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant . . . vehicles . . . or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule of the commission or director. . . . The property seized is subject to forfeiture to the state *under this section* regardless of ownership.

(2) In the event of a seizure of property *under this section*, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized.

RCW 77.15.070 (1), (2) (emphasis added).

In relevant part, the evidence seizure statute provides:

77.15.094 Search without warrant—Seizure of evidence, property—Limitation. Fish and wildlife officers and ex officio fish and wildlife officers may make a reasonable search without warrant of . . . vehicles, containers . . . and wildlife which they have reason to believe contain

evidence of a violation of law or rules adopted pursuant to this title and seize evidence as needed for law enforcement. * * * Seizure of evidence of a crime *does not preclude seizure of the property for forfeiture* as authorized by law.

RCW 77.15.094 (emphasis added).

The trial court placed its reliance on the 15 day limit of RCW 77.15.070(2), noting that the *seizure* had occurred in November and that notice of forfeiture was not given until the end of January.² We think this approach ignores the totality of the legislation, including the plain language of § 070 as well as the final sentence of § 094.

Under the language of the final sentence of § 094, there can be seizures for multiple purposes. That section also specifies the classes of items that can be seized for evidence without a warrant.

The language of the forfeiture statute, § 070, also designates the items that can be seized and forfeited due to their use in the commission of an offense. Critically, both subsections (1) and (2), are expressly limited to actions *under this section*.

RCW 77.15.070 (1), (2). The Revised Code of Washington codifies state legislation, in accordance with legislative direction, by title, chapter, and section. *See LAWS OF 1951,*

² Respondents complain that DFW should not have been permitted to add evidence to the record in its reconsideration motion. One piece of that evidence was the receipt for the seized items; that document expressly says the materials were seized for evidentiary purposes. The trial judge permitted the evidence, but we need not address the propriety of that action since the forfeiture notice, put into the record by both parties on multiple occasions, expressly notes that the November seizure was for evidentiary reasons. *E.g.*, CP at 6, 56.

ch. 5. The final decimal places designate the section of the legislation. *Id.* at § 5. Thus, the forfeiture provision is section 70 of chapter 15 of title 77. The directives of RCW 77.15.070 (1) and (2)—defining what evidence can be seized for forfeiture and when jurisdiction to forfeit arises—are expressly limited to that section of the revised code.

Thus, the critical language in the forfeiture statute is the first sentence of the second subsection: “In the event of a seizure of property *under this section*, jurisdiction to begin the forfeiture proceedings shall commence upon seizure.” RCW 77.15.070(2) (emphasis added). That seizure, in turn, requires the government to act within 15 days by providing notice of the intent to forfeit. *Id.* (second sentence). By ignoring the language that makes seizures for forfeiture purposes the trigger for the timing of the forfeiture process, the trial court failed to give effect to all of the language in the statute.

Whatcom County, 128 Wn.2d at 546. An evidentiary seizure does not trigger the time limitations of the forfeiture statute; only a forfeiture seizure triggers the time limits.

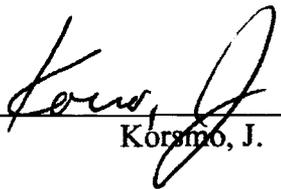
Read together, the statutory scheme permits seizures of property for either evidentiary reasons (§ 094) or for forfeiture purposes (§ 070). Property seized for evidentiary reasons can also be seized for purposes of forfeiture. RCW 77.15.094. While authorizing seizures for multiple purposes, nothing in the statutory scheme requires that the seizures occur at the same time and nothing prohibits sequential seizure of property for first one purpose and then for the next.

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DFW properly seized the truck and other items of potential evidentiary value while the crime was being investigated. Once the DNA test confirmed that the blood in the truck came from the illegally shot deer, it had reason to believe that the truck had been used to facilitate the crime. The truck was then properly subject to forfeiture. This was a proper investigative process and we know of no reason why DFW was required to begin the forfeiture proceeding before it could ascertain the truck's use to transport the deer.

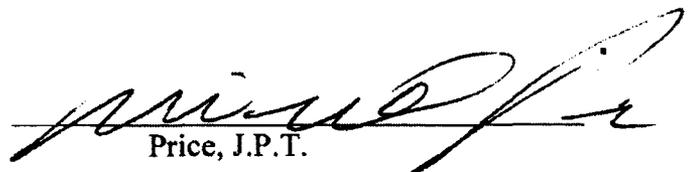
The trial court understandably was concerned that by sequentially seizing property, the government could unreasonably deprive people of the use of their property by prolonging proceedings. However, the remedy for unlawful seizure is a motion for return of property rather than a hurried forfeiture process. CrR 2.3(e).

Accordingly, we reverse the order of dismissal and remand this action for further proceedings.


Korman, J.

WE CONCUR:


Siddoway, C.J.


Price, J.P.T.

Appendix B

RCW 77.15.070**Civil forfeiture of property used for violation of chapter.**

(1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule of the commission or director. However, fish and wildlife officers or ex officio fish and wildlife officers may not seize any item or article, other than for evidence, if under the circumstances, it is reasonable to conclude that the violation was inadvertent. The property seized is subject to forfeiture to the state under this section regardless of ownership. Property seized may be recovered by its owner by depositing with the department or into court a cash bond or equivalent security equal to the value of the seized property but not more than one hundred thousand dollars. Such cash bond or security is subject to forfeiture in lieu of the property. Forfeiture of property seized under this section is a civil forfeiture against property and is intended to be a remedial civil sanction.

(2) In the event of a seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(3) Persons claiming a right of ownership or right to possession of property are entitled to a hearing to contest forfeiture. Such a claim shall specify the claim of ownership or possession and shall be made in writing and served on the director within forty-five days of the seizure. If the seizing authority has complied with notice requirements and there is no claim made within forty-five days, then the property shall be forfeited to the state.

(4) If any person timely serves the director with a claim to property, the person shall be afforded an opportunity to be heard as to the person's claim or right. The hearing shall be before the director or director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the property seized is more than five thousand dollars. The department may settle a person's claim of ownership prior to the administrative hearing.

(5) The hearing to contest forfeiture and any subsequent appeal shall be as provided for in chapter 34.05 RCW, the administrative procedure act. The seizing authority has the burden to demonstrate that it had reason to believe the property was held with intent to violate or was used in violation of this title or rule of the commission or director. The person contesting forfeiture has the burden of production and proof by a preponderance of evidence that the person owns or has a right to possess the property and:

(a) That the property was not held with intent to violate or used in violation of this title; or

(b) If the property is a boat, airplane, or vehicle, that the illegal use or planned illegal use of the boat, airplane, or vehicle occurred without the owner's knowledge or consent, and that the owner acted reasonably to prevent illegal uses of such boat, airplane, or vehicle.

(6) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission. No

security interest in seized property may be perfected after seizure.

(7) If seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the fish and wildlife enforcement reward account created in RCW 77.15.425.

[2005 c 406 § 2; 2000 c 107 § 231; 1998 c 190 § 69.]

Appendix C

RCW 77.15.094**Search without warrant — Seizure of evidence, property — Limitation.**

Fish and wildlife officers and ex officio fish and wildlife officers may make a reasonable search without warrant of a vessel, conveyances, vehicles, containers, packages, or other receptacles for fish, seaweed, shellfish, and wildlife which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title and seize evidence as needed for law enforcement. This authority does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution. Seizure of property as evidence of a crime does not preclude seizure of the property for forfeiture as authorized by law.

[2001 c 253 § 25; 2000 c 107 § 214; 1998 c 190 § 115; 1987 c 506 § 20; 1980 c 78 § 21; 1955 c 36 § 77.12.090. Prior: 1947 c 275 § 19; Rem. Supp. 1947 § 5992-29. Formerly RCW 77.12.090.]

Notes:

Legislative findings and intent -- 1987 c 506: See note following RCW 77.04.020.

Effective date -- Intent, construction -- Savings -- Severability -- 1980 c 78: See notes following RCW 77.04.010.

Appendix D

RCW 69.50.509**Search and seizure of controlled substances.**

If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter.

[1987 c 202 § 228; 1971 ex.s. c 308 § 69.50.509.]

Notes:

Intent -- 1987 c 202: See note following RCW 2.04.190.

Appendix E

RCW 69.50.505**Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia*21 other than paraphernalia possessed, sold, or used solely to facilitate marijuana-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of

money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce, process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any **board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A **board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The **board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within

forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the **board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the **board, the owners of which are unknown, are contraband and shall be summarily forfeited to the **board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the **board.

(13) The failure, upon demand by a **board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial

or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7) (b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

[2013 c 3 § 25 (Initiative Measure No. 502, approved November 6, 2012). Prior: 2009 c 479 § 46; 2009 c 364 § 1; 2008 c 6 § 631; 2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1; prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 §69.50.505 .]

Notes:

Reviser's note: *(1) The number 21 was inadvertently added in the document filed with the secretary of state's office.

** (2) Chapter 19, Laws of 2013 changed "state board of pharmacy" to "pharmacy quality assurance commission."

Intent -- 2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Effective date -- 2009 c 479: See note following RCW 2.56.030.

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Severability -- 2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date -- 1990 c 213 §§ 2 and 12: See note following RCW 64.44.010.

Severability -- 1990 c 213: See RCW 64.44.901.

Findings -- 1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Severability -- 1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

Court Improvement Act of 1984 -- Effective dates -- Severability -- Short title -- 1984 c 258: See notes following RCW 3.30.010.

Intent -- 1984 c 258: See note following RCW 3.34.130.

Severability -- 1983 c 2: See note following RCW 18.71.030.

Effective date -- 1982 c 189: See note following RCW 34.12.020.

Severability -- Effective date -- 1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability -- 1981 c 48: See note following RCW 69.50.102.

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NO. _____
SUPREME COURT
OF THE STATE OF WASHINGTON

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND
WILDLIFE**

Respondent,

vs.

**ONE 1999 FORD F350 DIESEL PICKUP
TRUCK, and a REMINGTON MODEL
77, 7mm RIFLE,**

**JOHN R. COON and SABRINA K.
COON,**

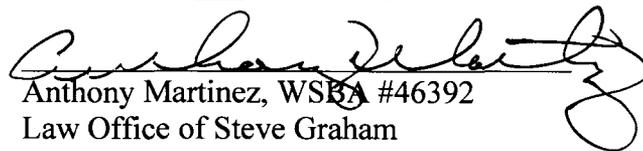
Petitioner.

NO. 31361-1-III

AFFIDAVIT OF CERTIFICATION

I, Anthony Martinez, do hereby certify under penalty of perjury that on August 14, 2014, I hand delivered a true and correct copy of the foregoing Petition for Review to the Court of Appeals, Division III, 500 North Cedar Street, Spokane, WA 99210. Additionally, I mailed a copy of the foregoing Petition for Review to Michael M. Young, Assistant Attorney General, P.O. Box 40100, Olympia, WA 98504. Finally, I also mailed a copy of the foregoing Petition for Review to John and Sabrina Coon, 292 Taylor Ranch Rd., Sequim, WA. 98382.

DATED this 14th day of August, 2014



Anthony Martinez, WSKA #46392
Law Office of Steve Graham
1312 North Monroe, #140
Spokane, WA. 99201