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WASHINGTON STATE  
SUPREME COURT

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FEB 16 2018  
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Supreme Court

THE SUPREME COURT OF THE  
STATE OF WASHINGTON

No. 95380-5

Court of Appeals No. 33888-6-III

Leopoldo Cuevas Cardenas,  
Appellant/Plaintiff,

vs.

State of Washington,  
Respondent.

Reply to Answer to Petition For  
Review by Joseph Anthony Brusic

Leopoldo Cuevas Cardenas  
Appellant/Plaintiff Pro Se  
#919072  
Washington State Penitentiary  
1313 North 13<sup>th</sup> Avenue  
Walla Walla, WA 99362

## I. Introduction.

I am Leopoldo Cuevas Cardenas, Appellant/Plaintiff Pro Se in the present matter. I have been unlawfully incarcerated since August 24, 2015. I am presently incarcerated at the Washington State Penitentiary Minimum Security Unit (MSU). I do not have any access to a law library and have not had any access to one since the beginning of these proceedings. Nonetheless, I have presented a defense as best as I have been able under my circumstances and I have been able to back up my claims, facts and, argument with the State created record. However, my efforts, constitutional law, case law, statutory law, RAP Rules and regulations have been completely ignored, overlooked and/or twisted. Have I been greatly prejudiced by this arbitrary acts? Yes! So much so that I am still in prison.

## II. Statement Of The Case

This Court is invited to review: 1) Brief of Appellant; 2) Statement of Additional Grounds for Review

Of Appellant Leopoldo Cuevas Cardenas; 3) Supplemental Brief of Appellant; 4) Petition For Review Of the Court Of Appeals, Division III, Arbitrary And Unconstitutional Opinion; 5) Brief Of Respondent and; 6) Answer to Petition for Review by Yakima County.

Additionally, I just received a copy of the court's CrR 3.5 findings of fact and conclusions of law - which I received on January 9, 2018, attached herein as Appendix F. This is submitted as proof of the trial court's partiality and arbitrariness. Deputy Justin Swale committed perjury. On October 26, 2015, deputy Swale, under oath, testified that; "he did not arrest me until after he questioned me." RP at 52-54. He did not question me at all, he arrested me. RP at 55 and RP 62-63. My statement is corroborated by deputy Swale's own report and Request For A Determination Of Probable Cause And Findings. See Exhibit No. 1 Pages 2 of 3 and 3 of 3. Deputy Swale arrested me for being; "a hispanic male with a shaved head and, a black leather jacket, and he arrested me for burglary without reading

Superior Court judge, Blaine E. Gibson, arbitrarily disregarded my testimony. See Appendix F.

### III. Argument

David Soukup did not dispute the veracity and evidence submitted in the Statement of Additional Grounds for Review of Appellant Leopoldo Cuevas Cardenas. See Brief of Respondent. Pursuant to RAP Rules if a party fails to answer or defend he/she waives the right to do so at a later time and the deciding court must make a ruling based on the undisputed facts.

Mr. Soukup now claims that; "the Court of Appeals did not call for a response to that SAB by the State..." Answer to Petition at 5. However, the Court of Appeals did make a decision on my Statement of Additional Grounds (SAB). See Unpublished Opinion at 7-13. Thus, either the Court of Appeals improperly argued for Mr. Soukup or the argument was made between the court and Mr. Soukup or Mr. Trefry over the phone. I am the Appellant and Plaintiff now of this case. I have a right

to defend myself against any false accusation by Mr. Soukup. I also have the right to the assistance of counsel. If I see that my appointed counsel overlooks an issue and it is of great prejudice to me I will bring it up to the court's attention in the best possible way I can under my restraint and Mr. Soukup is obligated to respond. In the present case Mr. Soukup chose not to respond. When a reviewing court decides to ignore the issues I present for review it is in fact; 1) Denying me access to that court; 2) Denying me the right to defend myself; 3) It makes itself an accomplice and accessory to the crime of unlawful imprisonment. I never relinquished my rights to my attorney, I only accepted her assistance. This type of governmental misconduct has destroyed my life and caused me 26 years of unlawful imprisonment and it needs to end today. If my issues are not addressed properly along with the evidence submitted, this Court will be covering up a crime, and rewarding a true and

ruthless criminals like Mr. Soukup, Mr. Swan and, Mr. Gibson. Let us call a spade for what it really is and unmasked the offenders that destroyed and offend the integrity of the State of Washington. I may not be as educated as you are nor do I need to be to see the injustice that it is being done here all over again. Not having the degree of education you have been blessed with it's not a crime. A crime is having the degree of education you have, the position you have been entrusted with and which you use to oppress the less fortunate, the one you swore to protect not to abuse. So far as I understand it my only crimes are: 1) Not having a law degree and; 2) money to pay you off.

### Computation of the Offender Score

Mr. Soukup and Mr. Trefry brag about their law degree and extensive education. This means that their persistence to cause to serve a sentence in excess of the maximum penalty for an attempt is malicious and vindictive. They admit that the top of the range

they used and should be used is 51-68, Answer at 4,  
For a burglary and "38.5-51" is 75% of the full range. So  
what part of 68 months you do not understand that  
exceeds the 60 months maximum penalty for an  
attempt which is what I was unlawfully convicted  
of? 68 months clearly exceeds 60, thus, I did not  
get 75% of 60. You are not authorized to use  
68 months as the basis. This is, however, if my  
offender score was 9+ as you claim it to be.  
but it is not. You are blinded by your "extensive"  
education. I have provided you with every judgment  
and sentence, statutory law which mandates how  
the counts within each cause shall be counted and  
you still refused to apply applicable law and man  
up to the fact that your computation is wrong,  
the method you used and are using is "illegal."  
You had rather cause an innocent man a very lengthy  
and illegal sentence than to admit that your bias  
and hate caused you to commit a crime against  
me.

## IV. Conclusion

This Court must vacate my conviction and sentence as mandated by Constitutional Law as argued in the Statement of Additional Grounds for Review of Appellant Leopoldo Cuevas Cardenas and Petition for Review. In the alternative, this Court must vacate the sentence with remand to the superior court to appropriately compute the offender score, apply the correct sentence and allow me to be present during this process.

Respectfully submitted this 8<sup>th</sup> day of February, 2018.

  
Leopoldo Cuevas Cardenas  
Appellant / Plaintiff Pro Se

Certificate of Service

I certify under penalty of perjury and under the laws of the State of Washington that I served a true and correct copy of the foregoing and any attachments via U.S. Mail addressed as follows:

David B. Treacy WSBA #16050  
Senior Deputy Prosecuting Attorney  
PO Box 4846  
Spokane, WA 99220

this 8th day of February, 2018, at Walla Walla, WA 99362.

  
Leopoldo Cardenas  
Appellant / Plaintiff Pro Se

Appendix ~~A~~ F

FILED  
SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

'16 JUN -6 A9:08

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

LEOPPOLDO CUEVAS CARDENAS,

Defendant.

NO. 15-1-01291-1

CrR 3.5 FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

THIS MATTER having come on upon the motion of the defense and the Court having considered the testimony of Yakima County Sheriff's Office Deputy Justin Swale and the defendant, together with the argument of counsel and the file herein, now enters the following:

**I. FINDINGS OF FACT AS TO UNDISPUTED FACTS**

- 1.1 On August 24, 2015, Deputy Justin Swale responded to a report of an attempted burglary of an espresso stand near Wapato, Washington. He responded to the location and observed damage to a security door to the building that appeared to him to be consistent with someone trying to pry the door open. He spoke with the owner of the stand who showed him video taken by a surveillance system at the stand. The deputy could view a man attempting to pry open the damaged door.
- 1.2 The espresso stand owner, Robert Castillo, told the deputy that the security door had not been damaged previously. In the video the deputy could see the clothing of the man prying the door.

- 1.3 The deputy then drove around the town of Wapato looking for the man he had seen in the video. Approximately 20 minutes after leaving the espresso stand he saw the defendant approximately eight to ten city blocks from the espresso stand. He observed that his clothing was similar to the man he had seen in the video and the deputy believed him to be the same person.

## **II. FINDINGS OF FACT AS TO DISPUTED FACTS**

- 2.1 Deputy Swale got out of his patrol vehicle, approached the defendant, and told him that he was investigating a burglary.
- 2.2 At that point the defendant told the deputy that he had only walked by the coffee stand. This is the statement which the State offers.
- 2.3 Deputy had only told the defendant that he was investigating a burglary at this point. He did not make any other statements or ask any questions.
- 2.4 The defendant was not under arrest at this point and no reasonable person would have believed that they were under arrest.
- 2.5 No Miranda warnings had been given to the defendant by this time.

Having entered the above findings of fact, the Court now reaches the below:

## **III. CONCLUSIONS OF LAW**

- 3.1 Since no reasonable person in the defendant's position would have believed themselves to be under arrest, and the deputy did not ask any questions at the point at which the defendant said "I just walked by the coffee shop", Miranda warnings were not required and the statement is admissible.

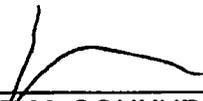
Therefore the defendant's motion to suppress evidence is DENIED.

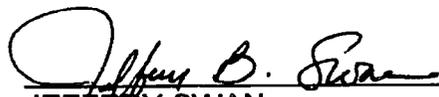
DATED: 6-6-16

  
\_\_\_\_\_  
JUDGE

Presented by:

Approved as to form:

  
\_\_\_\_\_  
DAVID M. SOUKUP  
Deputy Prosecuting Attorney  
WSBA#: 18177

  
\_\_\_\_\_  
JEFFERY SWAN  
Defense Attorney  
WSBA# 24010