

Supreme Court, U.S.  
FILED

DEC 26 2017

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18-8644

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

EMANUEL L. FINCH — PETITIONER  
(Your Name)

vs.

BRADLEY GRAHAM et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Ninth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EMANUEL L. FINCH 348900

(Your Name) R-A / 23-L

P.O. Box 2049

(Address)

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N/A

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UNITED STATES  
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QUESTION(S) PRESENTED

(1)

Whether it is a question of Law for the Supreme Court of the United States to determine the conduct complained of ?

(2)

Whether the Petitioner have a Constitutional right to a fair trial ?

(3)

Whether there was a denial of due process because the evidence was unconstitutionally insufficient to convict ?

(4)

Whether the verdict should be set aside because it was contrary to the weight of evidence ?

(5)

Whether there was a denial of due process to the Petitioner because the trial did not comport with fundamental fairness because of the improper actions of Police and Prosecutor ?

(6)

Whether the materiality of false testimony is a question of Law ? for the Supreme Court of the United States to decide ?

(7)

Whether the State bears the burden of proving voluntary consent when it obtains consent known as 'knock and talk' ?

(8)

Whether the State or Defense Attorney have the burden to declare a witness unavailable ?

(9)

Whether the Petitioner have a Constitutional right to confront witnesses against him ?

(10)

Whether the failure of the trial court to advise the Petitioner of his CrR 35 (b) rights at the suppression hearing constitute reversible error ?

(11)

What constitute or consider a 'seizure' ?

(12)

If a person or suspect is 'seized' is he consider to be in 'custody' for Miranda purposes?

(13)

Whether in Washington State according to CrRLJ 3.1 " the phase taken into 'custody' has been replaced with has been 'arrested' ?

(14)

For the purpose of Miranda V Arizona, 348 US 436 (1966), is the Police required to advise a person or suspect of his or her Miranda rights if he or she is in Police custody ?

(15)

Whether CrR 3.1 (b)(1) is equivalent to that of CrRLJ 3.1 (b)(1), that rule based on the right to Counsel before the Petitioner has a Sixth Amendment right to Counsel ?

(16)

Whether the right to a Lawyer shall accures as soon as feasible 'after the person or suspect is taken into custody ?

(17)

Whether the Police must comply with Ferrier warning prior to entering a person or suspect residence to effect an arrest or search ?

(18)

What constitute a Warrantless Search or Seizure ?

(19)

Whether a person or suspect have a Constitutional right to be confronted with evidence used against him including Audio and Video recordings ?

(20)

Whether a person or suspect have a Constitutional right to Compulsory Process ?

## **LIST OF PARTIES**

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix R to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## **JURISDICTION**

**[ ] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was Oct. 5, 2017.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

**[ ] For cases from state courts:**

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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#### STATEMENT OF THE CASE

I  
The Petitioner claim that on or about or before May 7, 2015. The Petitioner filed a Gravamen against Detective Graham and Detective Cynthia Brooks in the United States District Court, Western District at Tacoma, Case No. 3:15-CV-05305-RBL-JRC and filed a Notice of Appeals in the Ninth Circuit Court, Case No. 15-35971 (Appendix R) pursuant to 42 U.S.C. 1983 and under the Civil Right Act of 1866 (1)(4)(11) on the ground that Detective Graham, Detective Cynthia Brooks deprived him of a Right, Privilege, and Immunity secured and protected by the Constitution and Laws of the United States pursuant to 18 U.S.C. 245 (b)(1), (b)(2) and under the Washington State Constitution while acting under the color of Law in violation of Law of 1975-86 2nd ex.s. c38, sec.17 (1)(a).

II

According to the Findings of Fact and Conclusion of Law following 3.5 hearing (Appendix A) on Page 2, Line (10)(2) stated that:

On August 10, 2010, Detective Cynthia Brooks contacted the Petitioner via telephone to schedule a time for a interview for the following day.

On August 11, 2010, the Petitioner drove himself to the Tacoma Police Department Headquarters. The Petitioner arrived slightly before the arranged time of 1:30 P.M. Upon arrival the Petitioner waited in the Lobby until Detective Cynthia Brooks escorted him into their interview room.

On page 2, line 23 in the Findings of Fact and Conclusion of Law following 3.5 hearing. It is stated that the Petitioner was not restrained in any way nor was he under arrest.

On page 3, line ? (5) in the Findings of Fact and Conclusion of Law following 3.5 hearing it stated that: Detective Cynthia Brooks and Detective Aguirre asked the Petitioner for permission to audio record their interview. It is alleged that the Petitioner gave permission for the interview to audio recorded prior to the interview commencing. It is allege that Detective Cynthia Brooks properly properly advised the Petitioner of his Miranda rights using an Advisement of Rights Form (Appendix B). The Petitioner signed the Advisement of Rights Form indicating that the Petitioner understood his Miranda rights.

On, line 13 (7) in the Findings of Fact and Conclusion of Law following 3.5 hearing. It stated that the Petitioner never asked about his Miranda rights at any time during his contact with Law Enforcement. The Petitioner never asked for an Attorney at any time during his contact with Law Enforcement. The Petitioner never invoked any of his Miranda rights at any time during his contact with Law Enforcement.

On Line 20 (8) in the Findings of Fact and Conclusion of Law following 3.5 hearing it stated that at the conclusion of the interview, the Petitioner was allowed to leave.

III.

Referring back to (Appendix A) Findings of Facts and Conclusion of Law following 3.5 hearing, the Petitioner claim that On page 3 Line 17 thru 20 states that: 8/13/2010, Detective Graham, Detective Books and Detective Miller went to the Petitioner's residence on or about 12:40 P.M. The Petitioner was not provided advance notice that Law Enforcement intended to contact him.

On page 4, line 3(10) in the Findings of Fact and Conclusion of Law following 3.5 hearing stated that: Upon arrival, Law Enforcement knocked on the door. The door was answered by the Petitioner who invited Law Enforcement inside. Detective Graham spoke with the Petitioner's Wife in the Kitchen while Detective Brooks spoke with the Petitioner. Detective Brooks did not ask the Petitioner any questions regarding the allegations but requested a second interview. The Petitioner agreed to participate in another interview.

On line 8 in the Findings of Fact and Conclusion of Law following 3.5 hearing stated that: The Petitioner was escorted into the back of Detective Miller's Vehicle. The Petitioner was not placed in handcuffs or otherwise restrained in any way. Detective Graham arrived at the sub-station shortly after Detective Brooks and Detective Miller.

On page 5, line ? (2) in the Findings of Fact and Conclusion of Law following 3.5 hearing stated that: Detective Graham advised the Petitioner of his Miranda rights using an Advisement of rights Form (Appendix C). It is alleged that Detective Graham read the Petitioner his rights out loud while placing the Form in front of the Petitioner so he could follow along.

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The Petitioner signed the Advisement of Rights Form indicating that he understood his Miranda rights and voluntarily wished to answer questions. The Petitioner understood his rights.

On Line 6 (3) in the Findings of Fact and Conclusion of Law following 3.5

hearing, after interviewing the Petitioner after less than one hour, Detective Graham asked the Petitioner if he would agree to have their interview audio recorded. The Petitioner decline to have the interview to be audio recorded. The Petitioner decline to allow the interview be audio recorded. Detective Graham asked the Petitioner if he was willing to make a recording that he decline to have the interview recorded. The Petitioner agreed and a recording was made documenting the Petitioner's refusal to allow the interview to be recorded.

IV.

On Line 18 (5) in the Findings of Fact and Conclusion of Law following 3.5

hearing state that: The Petitioner is not a credible witness. The Petitioner stated during testimony that he did not recall Detective Graham orally advising him of his Miranda rights. The Petitioner acknowledged signing a written Advisement of Rights Form .

The Petitioner testified that he requested an Attorney and requested the interview be terminated.

V.

Detective Graham testified that the Petitioner did not request an Attorney at any time during his contact with the Petitioner on August 13, 2010.

Detective Graham testified that the defendant did not request to terminate the interview at any time during his contact with the defendant on August 13, 2010.

Detective Brooks testified that the defendant did not request to terminate the interview at any time during her contact with the defendant on August 13, 2010.

Detective Miller testified that the defendant did not request an Attorney at any time during his contact with the defendant on August 13, 2010.

Detective Miller testified that the defendant did not request to terminate the interview at any time during his contact with the defendant on August 13, 2010.

VI.

#### THE PETITIONER ARGUMENTS

A

Referring back to (Appendix A) Findings of Facts and Conclusion of Law following 3.5 hearing,

On Page 3, Line ?, (5): Detective Brooks and Detective Aguirre "asked the defendant for permission to audio record their interview".

It is alleged that the defendant gave permission for the interview to be audio recorded prior to the interview commencing.

FIRST: The Petitioner argue that he was unaware that the interview was being 'Audio and Video Recorded'.

SECOND:

The Petitioner claim that: Detective Brooks and Detective Aguirre by (1) Violated R.C.W. 9.73.090 (1)(b)(i)(ii)(iii) or Laws of Wa. 2006 c38, sec. 1 (1)(b)(i)(ii)(iii) provide: "The Legislature has provided no exceptions for Advisement of Constitutional Rights prior to the recording, not even where there may be independent evidence of a knowing, intelligent, and voluntary written waiver of those rights.

In order to satisfy subsection (1)(b)(i)(ii)(iii) of this section, a recorded statement must contain a full statement of the defendant's Miranda rights. A mere reference to a prior written waiver is insufficient. Appellate Courts may not substitute 'substantial compliance' with the Legislatively mandated strict compliance with the requirement that 'Police' fully inform an arrestee of his Constitutional Rights on the recording (see) State V Mazzante, 86 Wn. App. 425, 936 P.2d 1206 (1997) (also) State V Cunningham, 93 Wash. 2d 823, 613 P.2d 1139 (1980).

Prior to the interview commencing The Washington State Privacy Act requires Police Officers to include the beginning and ending time in the recorded conversations with arrestee (see) State V Hutchinson, 85 Wn. App. 726 (1998).

The meaning of R.C.W. 9.73.090 or Laws of Wa. 2006 c38, sec. 1 (1)(b)(i)(ii)(iii) is clear from the language of the Statute alone.

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THIRD:

Failing to inform the Petitioner that the interview is being Video Recorded.

FOURTH:

The Petitioner claim that the State failed to produce this Audio and Video Recording at his Trial which the Petitioner have reason to believe that the State and the Defense Attorney had in their possession any time after 8/11/2010.

FIFTH:

The Petitioner claim that failure to produce this Audio and Video Recording at Trial violate the 'Missing Witness Doctrine' and the Petitioner' Amendment 6 of the United States Constitution and Article 1, sec. 22 (also) Laws of Wa. 2010 c8, sec. 1048 or R.C.W. 10.52.060. The Petitioner maintained that the State made no showing it attempted to establish any reason for the absence of this witness, " it is the party against whom the rule would operate who is entitled to explain the witness's absence and avoid operation of the inference (see) 2 J.Wigmore, sec. 290 at 216. Which the Washington Courts have said: " In context of failure to the State to call certain witnesses, that the inference arises ' once where, under all circumstances of the case the witnesses create suspicion that there has been willful attempt to withhold competent testimony" (see) State V Montgomery, 163 Wn. 2d 577 (2008)(also) State V Blair, 117 Wn. 2d at 488 (also) State V Sunberg, 185 Wn. 2d 147 (2016).

B

FIRST:

Referring back to (Appendix A) Findings of Facts and Conclusion of Law following 3.5 hearing,

On Page 3, Line 17 thru states: On 8/13/2010, Detective Graham, Detective Books and Detective Miller went to the Petitioner's residence on or about 12:40 P.M. The Petitioner was not provided advance notice that Law Enforcement intended to contact him.

SECOND:

According to the Findings of Fact and Conclusion of Law following 3.5 hearing stated that: Upon arrival, Law Enforcement knocked on the door. The door was answered by the Petitioner who invited Law Enforcement inside.

THIRD:

The Petitioner argue that this is " patently false" there is conflict in the record 'who opened the door'.

FOURTH:

The Petitioner argue that he or his wife invited Detective Graham, Brooks and Miller into their residence.

FIFTH:

The Petitioner claim that if anyone in the residence refused to open door after Law Enforcement knock on the door and person[s] refuse to open door Law Enforcement have the authority to breach the residence pursuant to Laws of Wa. 2010 c8, sec. 1030.

SIXTH:

THE Petitioner argue that Law Enforcement failed to comply with a Supreme Court of Washington decision in State V Ferrier, 136 Wn. 2d 103 (1998) held that: Before entering a citizen's home without a Warrant, A Law Enforcement Officer must ask the Citizen for consent, inform the Citizen that he can revoke consent at anytime, and notify the Citizens he can limited the scope of the entry into their home.

SEVENTH:

in referring to the Findings of Fact and Conclusion of Law following 3.5 hearing, Page 4, Line 3 states: Detective Graham spoke with the defendant's wife in the Kitchen.

The Petitioner argue that Detective Graham failed to ask the Petitioner for permission to enter the Petitioner's Kitchen.

EIGHTH:

The Petitioner have that Detective Graham, Brooks and Miller violated the Petitioner Rights pursuant to the United States Constitution Amendment 4 unreasonable search and seizure and Washington State Constitution Article 1, sec. 7 and the deprivation of the Petitioner's personal Sovereignty.

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#### NINTH

The Petitioner argue that: once Detective Graham, Brooks and Miller were in his home that he is "seized" (see) Ashley V Sutton, 492 F.Supp. at 1246 (1) Constitutionality of Sutton's seizure of Ashley: (a) Was there a seizure ? states: A person is "seized" when by means of physical force or show of authority his freedom of movement is restricted. (also see) United States V Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed. 2d 497 (1980) ("Seizure, in Constitutional sense, occurs when there is a restraint on 'Liberty' that a reasonable person would not feel free to leave").

492 F.Supp. 2d 1246 held that: A seizure violate the Fourth Amendment if it objectively unreasonable under the circumstances.

Doe, 334 F.3d at 909 held that: Determination of whether a seizure was reasonable requires a two-step inquiry: First, whether a seizure has occurred, and, inso, whether that seizure was objectively unreasonable under the circumstances.

The Petitioner argue that during the period that Detective Graham, Brooks and Miller were in his home as Detective Miller stood behind the Petitioner sitting on his Couch he felt that he was not free to get up from his Couch and walk outside on the Porch, go to the rest room.

The Petitioner also argues that if he is "seized". He is is 'custody' of Detective Graham, Brooks and Miller in that case the Petitioner argue that Detective Graham, Brooks and Miller are required by Law to comply with CrR 3.1 (c)(1) and (c)(2).

According to CrR 3.1(b)(1), the phase "is taken in custody" has been replaced with "has been arrested".

The Petitioner argue that he was under arrest the moment Detective Graham, Brooks and Miller entered his home and in violation of Laws of Wa. 2010 c8, 1029 provide: The Officer making an arrest must inform the defendant that he or she acts under authority of Warrant, and must show the Warrant: also provide that: if the Officer does not have a Warrant in his or her possession at the time of arrest he or she shall declare that the Warrant does presently exist and will be shown to the defendant as soon as possible at the place of intended confinement, Detective Graham, Brooks and Miller failed to do so and the Petitioner should have been given an opportunity to be appointed an Attorney at that time and waited for the appointed Attorney arrival at his home but Detective Graham, Brooks and Miller failed to do so.

#### TENTH:

The Petitioner argue that according to a United States Court of Appeals for the Ninth Circuit decision in the Court of United States V Stubblefield, 621 F.2d 989 (1980) held that: The question of under what circumstances an Officer may enter a suspect's home to make an Warrantless arrest has been unsolved by the Supreme Court of the United States until the Court's decision in Payton V New York, 445 U.S. 573 (1980) held that: In term that apply equally to 'seizure of property' and to 'seizure of person' The Fourth Amendment has drawn a firm line to the entrance of the house ' that threshold may not be reasonably be crossed without a Warrant. In the Court of Illinois V Rodriguez, 497 U.S. 177 (1999) held that: The Fourth Amendment provides that " the right of the people to be secured in their home shall not be violated. The United States Supreme Court have recognized that the " physical entry of the home is the chief evil against the wording of the Fourth Amendment is directed.

According to Washington State Constitution Article 1, sec. 7 has also drawn a firm line at the entrance of the house. Which the home receives heightened Constitutional protection.

#### ELEVENTH

The Petitioner argue that in the Court of State V Budd, 186 Wn. App. 184 (2015) held that: The State have the burden of showing all Ferrier warning were given before entry into the residence State V Ferrier (1998) An absence of a finding that all warnings were given before entry is 'tantamount' to a finding they were not given. The absence of a finding on a material issue is presumptively a negative finding entered against the party with the burden of proof.

The State failed to proof that Detective Graham, Brooks and Miller failed to give such Warning.

In the Court of Orhorhaghe V Ins., 38 F.3d 488 (9th Cir. 1994) held that: The Ninth Circuit Court identified five factors that aids in determining a reasonable person would have felt " at liberty to ignore the Police presence and go about his business" The factor are : (1) The number of Officers: (2) Whether weapons was displayed: (3) Whether the encounter occurred in a public or non-public setting: (4) Whether the Officer's officious or authoritative manner would imply that compliance would be compelled: (5) Whether the Officer's advised the detainee of his right to terminate the encounter.

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In a Supreme Court of Washington decision in the Court of City of Seattle V McCready, 123 Wn. 2d 260 (1994) held that: Washington State Constitution Article 1, sec.7 breaks down into two basic components:

(1) The disturbance of a person's "private affairs" or the invasion of his or her home, which triggers the protection of the section.

(2) the requirement that " authority of Law" justified the Governmental disturbance or invasion.

Washington State Constitution Article 1, sec. 7 provide: That no person shall be disturbed in his Private affairs or his home invaded, without authority of Law.

According to R.C.W. 10.79.040 or Laws of Wa. 1921, P.207 or Rem.Comp. Stat. sec.2240-1 provide" It shall be unlawful for any Police Officer to enter and search any private dwelling, house, or place of residence without authority of a Search Warrant issued upon a complaint as by Law.

The Washington State Supreme Court believe that the great majority of home dwellers confronted by Police Officers on their doorstep or in their home would not question the absence of a Warrant requirement because they either:

(1) Would not know that a Warrant is required:

(2) Would feel inhibited from requesting its production, even if they knew of the Warrant requirement:

(3) Would simply be too stunned by the circumstances to make reasonable or reasoned decision about whether nervous seems totally reasonable, indeed, The Washington State Supreme Court are surprised that, as noted earlier, an Officer testified that virtually everybody confronted by a knock and talk accedes to the request to permit a search and seizure of their home (see) State V Ferrier, 136 Wn.2d 103 (1998).

Manner of entry " breaking" to enter means: A breaking to enter means any crossing of the threshold. According to E.Fisher, Search and Seizure ch.1, sec.35 at 63 provide: Its well established that the issuance of a search warrant is part of the criminal process. In the Court of State V White, 97 Wn.2d 92 (1982) held that: Without an immediate application of the "Exclusionary Rule" whenever an individual's right to privacy is unreasonably invaded. The protection of the Fourth Amendment and Washington State Constitution Article 1, sec. 7 are serious eroded. The Supreme Court of Washington can no longer permit it (the right to privacy to be revocable at the whim of Law Enforcement itself, founded on truth and reasons, gives to the individual no more than that which the Constitution guarantees him. A plurality of the Supreme Court of Washington found that Washington State Constitution Article 1, sec.7 conferred the right of " automatic standing" to contest illegal searches and seizures where Police Officers have ample time to secure an Warrant before invading a Citizen's residence. The Supreme Court of Washington do not look kindly on their failure to do so.Thompson, 151 Wn.2d at 822 and United States V Impink, 728 F.2d 1228, 1231 (9th Cir. 1984).

## VII

Referring back to (Appendix A) Findings of Facts and Conclusion of Law following 3.5 hearing,

On Page 4, Line 5 (10) states: that the Detective Brooks or Detective Miller did not ask the defendant any questions regarding the allegations but requested a second interview.

i

The Petitioner claim that this "patently false".

ii

The Petitioner claim that once Detective Brooks and Detective Miller escorted him outside of his home, the Petitioner was in custody, seized and under arrest of Detective Brooks and Detective Miller.

The Petitioner claim that he was handcuffed and escorted into the back of Detective Miller's vehicle.

iii

The Petitioner claim that neither Detective Brooks or Miller informed him that he was free to decline to accompany them to the Police Sub-station (see) United States V Mendenhall, 446 US 544 (1980) also United States V Berry, 670 F. 2d 583 (1982).

## VIII

Referring back to Findings of Facts and Conclusion of Law following 3.5 hearing, Page 4, Line 1 (1)

i

Detective Graham and Detective Brooks entered the interview room leaving " Detective Miller outside.

IX

Referring back to Findings of Facts and Conclusion of Law following 3.5 hearing,

i

On Page 5, Line (?) (2) stated that: Detective Graham advised the Petitioner of his Miranda rights using an Advisement of Rights Form (Appendix C).

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ii

Detective Graham stated that he read the Petitioner his rights out loud while placing the form in front of the Petitioner so he could follow along.

iii

The Petitioner claim that this is "Patently false" and this considered to be a false statement made by Detective Graham.

iv

The Petitioner signed the Advisement of Rights Form indicated that he understood his Miranda rights and voluntarily wished to answer questions.

v

The Petitioner claim that this is "Patently false".

The Petitioner claim that it is his signature on the Advisement of rights form, But in 'no way voluntarily wished to answer any questions ( the implied consent is Detective Graham doing, he took it accord to put words in the Petitioner mouth).

vi

On Page 5, Line 6 (3) stated that: after interviewing the Petitioner less than one hour, Detective Graham asked the Petitioner if he would agree to have their interview audio recorded. The Petitioner decline to allow the interview to be audio recorded.

Detective Graham asked the Petitioner if he was willing to make a recording that he decline to have the interview recorded.

The Petitioner agreed and a recording was made documenting the Petitioner's refusal to have the interview recorded. the Petitioner agreed and a recording was made documenting the Petitioner's refusal to allow the interview to be recorded.

The Petitioner claim that Detective Graham stated that he read the Petitioner his rights out loud.

vii

The Petitioner argue that: Detective Graham should or required to read the Petitioner Miranda rights at the beginning of the recording and Detective Graham failed to do so (see) Appendix I, Transcript of taped statement by E.Finch, Incident No. 3 of 4 and 4 of 4.

The Petitioner argue that the recording on 8/13/2010 is 'Nefarious'. It violates the Washington State Privacy Act, Laws of 1967 ex.s. c363, sec. 1(b) and Laws of Wa. 2010 c336, sec. 325 subsection (b)(i)(ii)(iii).

According to State V Mazzante, Jr., 86 Wn. App. 435 (1997) also State V Cunningham, 93 Wash. 2d 823 (1980) held that: Recording of custodial interrogation that did not contain full Miranda Advisement rights did not strictly comply with Statute and was inadmissible. Recordings fail to comply strictly with Statute. In order to satify, a recorded statement must contain a full statement of the Petitioner's Miranda rights. No case permitted " substantial compliance" with requirements in limited circumstances. No case has permitted only substantial, rather than " strict compliance" with requiring ' full Advisement of Constitutional rights on the recording. The Supreme Court of Washington ruled the recording inadmissible for non-compliance with the Statute " even though as here, the recording made reference to a previously signed statement of Constitutional rights ". The meaning of the Statute is " clear from the language of the Statute alone". The Legislature requires conformance with the Statute when Police Officers record statements of arrested persons. The Statute ' Mandates that ' the arrested person shall be fully informed of his Constitutional rights, and such statements shall be included at the beginning of the recording, not even where, as here, there may be independent evidence of a knowing, intelligent, and voluntarily written waver of those rights.

The Trial Court reasoned that the recording substantially complied with Statute because Mazzante " admitted signed a right form one and one half hour earlier" and affirmative acknowledge it on the tape. The Trial Court also noted the absence of Police misconduct and the resulted lack of " swearing contest" as to the voluntariness of Mazzante statement, however, requires strict compliance and in State V Warfield, 103 Wn. App. 152 (2000) in interpreting Statutes, the effect to the object and intent of the Legislature. Where the meaning of a Statute is clear on its face " means" exactly what it says a d give effect to plain language without regard to rules of Statutory construction.

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X

The Petitioner claim that on Page 5, Line 18 (5) in the Findings of Facts and Conclusion of Law following 3.5 hearing.

The Petitioner claim that: The Trial Court found the Petitioner not to be credible credible, there is no where in the Findings of Facts and Conclusion of Law following 3.5 hearing show that the Trial Court complied with Wash. Super. R. 3.5 (b).The Trial Court failure to advise the Petitioner of his right to testify as to the " voluntariness of his statement" without waving his Fifth Amendment privilege depriving him of the opportunity to make a learned decision as to whether he should testify at the ' Suppression hearing' (see) State V Alexander, 55 Wn. App. 102, 105, 776 P.2d 984, review denied 110 Wn. 2d 1039 (1988) (also) State v Williams, 91 Wn. App. 344, 955 Wash. App. Lexis 795 (1998) and the fact that the Trial Court relied only on Detective Graham, Detective Brooks and Detective Miller testimony alone.

ii

The Petitioner claim that during this 3.5 hearing or at Trial that he did no admit that he confessed at custodial interrogation on August 13, 2010.

According to CrR 101.20 W (a) provide: " In every criminal case in which a confession or confessions of the accused are to be offered in evidence, the Judge, either at the time of Trial or prior thereto, shall hold a hearing. In the absence of the Jury for the purpose of determine whether. In light of the surrounding circumstances, the confession was voluntary, and therefore admissible. A Court reporter shall record the evidence adduced at this hearing".

XI

i

The Petitioner argue that his complaint against Detective Graham, Detective Brooks is that Detective Graham deprived him of his right to an Attorney and the Video and Audio is the Petitioner Onus Probanti that the Petitioner did in fact request for an Attorney on both August 11, 2010 and August 13, 2010.

Detective Brooks witnessed that request. At Trial Detective Graham, Detective Brooks and Detective Miller testified that the Petitioner did not ask for an Attorney. The Petitioner claim this 'Patently False' ONE: Detective Miller was in the hallway when the request was made.

SECOND: The Petitioner was alone without Family, Friend or Attorney in that interrogation room when he asked for an Attorney.

ii

The Petitioner argue that Detective Graham denied him of this right and refused to give him the phone number to the Department of Assigned Counsel even though at that time the Petitioner did not know that the Department of Assigned Counsel existed and the Petitioner was attempting to comply with section (2) (3) (4) (5) of the Advisement of Rights Form.

iii

The Petitioner allegation that Detective Graham violated Laws of Wa.1989 c409, sec.1 consistent with Constitutional requirements of fairness, equal protection, due process in all cases where the right to Counsel attaches (also) CrR 3.1 (c)(1), (c)(2) (see) State V Tetzlaff, 75 Wn. 2d 649, 453 P.2d 638, 1969 Wash. Lexis 788 (1969) held that: An accused indigent has certain basic Constitutional rights that must be honored if an incriminating statement made by him is to used against him. Included within the enumerated rights is that legal Counsel, free to the indigent at the time of interrogation. While it is certainly true that's an accused may waive his right to Counsel during interrogation. It is equally true that such waiver is effective only knowingly, voluntarily, and intelligently made. One cannot effectively waive such a Constitutional right without knowledge of its existence.

In absence of a legitimate waver, the right of a known and identified accused to have Counsel present at the time of Police interrogation is an indispensable part of the protective privilege of the Fifth Amendment to the Federal Constitution.

(also see ) State V Pierce, 94 Wn. 2d 345, 618 P.2d 62, 1989 Wash. Lexis 1370 (1980).

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iv

The Petitioner argue that: The use of Petitioner's alleged confession against him at his Trial violated his right under the Fifth and Fourteenth Amendments to have Counsel present during custodial interrogation, as declared in *Miranda* 384 US 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602 (1966) Having exercising his right on August 13, 2010 to have Counsel present during custodial interrogation. Petitioner did not at anytime during custodial interrogation did the Petitioner waived that right on August 11 and 13, 2010.

In the Court of Arizona *V Edwards*, 451 US 477, 484-85, 101 S.Ct. 1889, 68 L.Ed. 2d 378 (1981) held that: Admission of confession obtained from defendant at custodial interrogation on day following defendant's request for Counsel, held violative of Fifth and Fourteenth Amendments right to have Counsel present at custodial interrogation.

In the Court of *Napue V Illinois*, 360 US 264 Held that: First: It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, fall under the Fourteenth Amendment (see) *Pyle V Kansas*, 317 US 213, 87 L.Ed. 214, 63 S.Ct. 177 (1942).

The principle that a State may not knowingly use false evidence, including false testimony, implicit in any concept of ordered liberty, do not cease to apply merely because the false testimony goes only to the credibility of the witness. 360 US at 270 provide: It is consequence that the falsehood bore the witness' credibility rather than directly upon defendant's guilty. " a lie is a lie, no matter what its subject.

XII

i

The Petitioner claim that Detective Graham was allowed to bring in a Transcript of CD recording (Appendix P ) (listed as People Exhibit 8 ) and the CD recording ( listed as people Exhibit 9 ).

The Petitioner claim that he was never confronted, read, heard People Exhibit 8 and 9 at the alleged 3.5 hearing and the Petitioner have reasons to believe that People Exhibit 8 and 9 was presented to the Jury.

ii

The Petitioner argue that the statements on Page 5, Line 22 and Page 6 (8) of the Findings of Facts and Conclusion of Law following 3.5 hearing is " Patently False ".

iii

According to the Court of *Miller V Pate*, 386 US 1 (1967) and *Brigg V Norris* 128 F.Supp. 2d 587 held that: Perjured testimony ( The Fourteenth Amendment prohibits a State conviction obtained by knowing false evidence Defendant's conviction violated " due process " since Police Officers " knowingly " gave material false testimony at Trial additionally, Prosecutor's allowing the false testimony to go " uncorrected " was a clear violation of the defendants due process rights ) and RPC 3.3 (a) (1) (2) (4) in violation of Laws of Wa. 2001 c171, sec.1, section 2 (1) (also see ) Laws of 2001 c308, sec.2.

iv

1

The Petitioner argue that because of his ignorance of the Law. on August 11, 2010 regarding to the Advisement of Rights Form (Appendix B ) stated in pertinent part: " to be asked by the Officer".

2

The Petitioner argue that the Advisement of Rights Form ' give ' Detective Brooks and Detective Aguirre " implied consent" or the authority to answer (1) and (2) in their handwriting on the behalf of the Petitioner.

3

The Petitioner argue that the answer to (1) and (2) should have been in his own hand writing.

XIII

The Petitioner is asking the United States Supreme Court to reverse the Petitioner conviction or remand back to the Superior Court for Resentencing or Retrial.

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Reasons for Granting the Writ or Petition.

The Petitioner have reason to believe that the United States Supreme Court have authority to investigate matters that is before the Court.

In Napue, 360 US 264, 3 L.ed. 2d 1217, 79 S.Ct. 1173 (1959) held that: The Supreme Court of the United States make its own " independent examination " of the record when Federal deprivation are alleged, The duty resting on the United States Supreme Court for maintaining the Constitution inviolate. (see) Martin V Hunter, 1 Wheat 304, 4 L. ed. 97 (1958) (also see) Cooper V Aaron, 358 US, 3 L.ed. 2d 5, 78 S.Ct. 1401 (1958).

360 US at 272 states: This principal was well stated in Niemkko V Maryland, 340 US 268, 271, 95 L.Ed. 267, 71 S.Ct. 325 (1951) " In cases in which there is a claim of denial of rights under Federal Constitution, The Supreme Court of the United States is not bound by the conclusion, but will reexamine the evidentiary basic on those conclusions are founded".

II

The Petitioner motion or asking the United States Supreme Court to take judicial notice over this Petition or Writ presented to the Court by the Petitioner pursuant to Fed. R. Evid. Article II, Rule 201 (c)(1)(2) and (d) and grant the Petitioner the opportunity to be heard pursuant to Fed. R. Evid. Article II, Rule 201 (e) On timely request, a party is entitled to be heard on the propriety of judicial notice and the nature of the noticed. If the Court takes judicial notice before notifying a party, on request, is entitled to be heard.

III

In the Constitutional and Laws of the United States are to be enforced, the United States Supreme Court cannot accept at final decision as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds.

IV

The Petitioner filed this Gravamen against Detective Graham and Detective in the Supreme Court of the United States Brooks pursuant to 42 USC 1983 on the "ground " Deprivation of the Petitioner's Constitutional rights while acting under Color of Law in violation of:

(i)

42 USC 1983 provide: The United States Supreme Court begin with the plain language of 1983 as originally passed: 42 USC 1983 provide in pertinent part: That " every person " who, under Color of any Statute, Ordinance, Regulation, Custom, or usage of any State subjects, " or cause to be subjected " any person to the deprivation of any Federal protected Rights, Privileges, or Immunities shall be liable to the injured person.

(ii)

Fourth Amendment of The United States Constitution provide: The right of the people to be secured in their person, houses, papers, and effect, against unreasonable Searches and Seizure, shall not be violated, and no Warrant shall be issued, but upon Probable Cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and person to be seized.

(iii)

Sixth Amendment of the United States Constitution provide in pertinent part: In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him and to have the assistance of Counsel for his defense.

(iv)

Fourteenth Amendment of the United States Constitution provide in pertinent part: All person born or naturalized in the United States and subject to the jurisdiction thereof, are Citizens of the United States, and of the State wherein they reside. No State shall make or enforce any Law which shall abridge the privileges or immunities of Citizens of the United States, Nor shall any State deprive any person of Life, Liberty, or Property without due process of Law Nor deny any person within its jurisdiction the equal protection of the Law. (also) makes the Sixth Amendment's guarantee of right to Counsel obligatory upon the State.

(v)

Article 1, sec. 7 of Washington State Constitution provide: " No person shall be disturbed in his private affairs, or his home invaded, without authority of Law". The requisite " authority of Law" is generally a Warrant.

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(vi)

Federal protected activity pursuant to 18 USC 245 (a)(1), (b)(1),(B)(2)

(vii)

Official Misconduct pursuant to Laws of 1975-1976 2d ex.s. c38, sec.17 or 2011 c336, sec. 408 (1)(a)(b)

(viii)

18 USC 242 and that the denial of the Petitioner's right, privilege, immunity secured by the Constitution and Laws of the United States.

ix

18 USC

241 provide: That if two or more persons conspires to injure, oppress, threaten, or intimidate any Citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or Laws of the United States. Criminal sanction may be imposed.

The language of 18 USC 241 is plain and unlimited. It embrace all of the Rights and Privileges secured to Citizen by all of the Constitution and all of the Laws of the United States. There is no indication in the language that sweep of the section is confirmed to rights that are conferred by or flow from. The Federal Government as distinguished from those secured or confirmed or guaranteed by the Constitution.

IV

According to Parratt V Taylor, 451US 12, (1981) (also see) Haygood V Younger, 769 F.2d 1350 (9th Cir. 1985) held that: for the Petitioner:

(1) to state a claim under 42 USC 1983. A complaint must allege that the conduct deprived a person acting Color of Law and that conduct deprived a person of a right, privilege, or immunity secured by the Constitution and Laws of the United States. Is the appropriate avenue to remedy any alleged wrong only if both of the elements:

V

The critical question in this Gravamen 42 USC 1983 complaint against:

(i)

Whether on August 8/2010 Detective Brooks, Detective Miller and CPS Worker Ricky Stephenson entered the Petitioner home.

(ii)

Whether, Detective Brooks " under the circumstances", refusal by Detective Brooks on August 11/2010 to honor the Petitioner request to be appointed an Attorney regarding Polygraph test.

(iii)

On 8/13/2010 Detective Graham, Detective Brooks and Detective Miller entered the Petitioner home.

(iv)

Whether Detective Graham and Detective Brooks on August 13/2010 failure to honor the Petitioner's request for an Attorney during the course of an interrogation constitute a denial of " Assistance of Counsel " in violation of Amendment Sixth of the United States Constitution and Article 1, sec. 22 of Washington State Constitution "while acting the Color of Law".

(v)

whether Detective Graham, Detective Brooks and Detective Miller violated the Petitioner' Rights pursuant to Fourth Amendment of The United States Constitution and Article 1, sec.7of Washington State Constitution and the Fourteenth Amendment of the United States Constitution.

FACTS

(i)

On August 8/2010 Detective Brooks, Detective Miller and CPS Worker Ricky Stephenson entered the Petitioner home.

(ii).

The Petitioner allege that Respondent Detective Brooks on 8/11/2010 violated the Washington State Privacy Law by asking the Petitioner for permission to audio record the interrogation but failed to advise the Petitioner for permission to video record the interrogation.

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(iii)

Whether Detective Graham, Detective Brooks and Detective Miller on 8/13/2010 violated the Fourth, Fourteenth Amendment of the United States Constitution and Article 1, sec. 7 of Washington State Constitution. After entering the Petitioner residence without consent in compliance with the Ferrier warning.

(iv)

Whether Detective Graham and Detective Brooks on 8/13/2010 during Custodial Interrogation violated the Petitioner of his right to assistance of Counsel after he request for an Attorney.

ARGUMENT

1

The Petitioner argue that Detective Brooks, Detective Miller and CPS Worker Ricky Stephenson Failure to comply with State V Ferrier, 136 Wn. 2d 103 (1998) warning and failure to ask for consent to enter the Petitioner residence and failure to advise the Petitioner of the right to refuse consent and of the right to limit the scope of the consent given before a valid entry is made.

(a)

The Petitioner argue that: According to State V Ferrier, 136 Wn.2d 103 (1998) states: This provision in Article 1, sec. 7 of Washington State Constitution differ from the Fourth Amendment in that " unlike the Fourth Amendment, Article 1, sec. 7 of Washington State Constitution clearly recognizes an individual's right to privacy with no express limitations" The residence or residence's consent is invalid under the Washington Constitution Article 1, sec. 7 if the resident was not informed by the Officers to their entry into the dwelling, that,

(1) Consent may be lawfully refused

(2) If consent is given it may be revoked at any time

(3) The scope of the consent may be limited (see) State V Leach, 113 Wn. 2d 735 (1989) (also) State V Impink, 728 F. 2d 1228 (1984) (also) State V Ferrier, 136 Wn.2d 103 (1998) (also) State V Budd, 186 Wn.App. 184 (2015).

(b)

The Ninth Circuit Court held that: the arrest in both Payton V New York, 445 US 573 (1989) and Obie Riddick cases to be illegal because of the warrantless and nonconsensual entry into the home of the Appellant.

The Ninth Circuit Court emphasized the significance of the boundaries of dwelling:

But the critical point is that any differences in the intrusiveness of entries to arrest are merely ones of degree rather than kind:

(1) The Breach of the entrance to an individual's home

(2) The Fourth Amendment protects the individual's privacy in a variety of settings:

(a) In none is the zone of privacy more clearly defined than when bounded by the ambiguous physical dimensions of an individual's home a zone that finds its roots in clear and specific Constitutional terms:

(b)

The Washington State Supreme Court believe that the great majority of home dwellers confronted by Police Officers on their doorstep or in their home would not question the absence of a Warrant requirement because they either:

(1) Would not know that a Warrant is required:

(2) Would feel inhibited from requesting its production, even if they knew of the Warrant requirement:

(3) Would simply be too stunned by the circumstances to make reasonable or reasoned decision about whether nervous seems totally reasonable, indeed, The Washington State Supreme Court are surprised that, as noted earlier, an Officer testified that virtually everybody confronted by a knock and talk accedes to the request to permit a search and seizure of their home.

(c)

The right of the people to be secured in their houses shall not be violated.

That language unequivocally establishes the proposition that at very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable Government intrusion.

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(d)

Where Judge Cooley in his Constitutional Limitations, PP. 425, 426, in treating of this feature of our Constitution said: " The maxim that 'every man's house is his Castle' is made a part of our Constitutional Laws in the clauses prohibiting unreasonable searches and seizures, and has been looked upon as of high value to the Citizens (see) 2 Watson, Constitutional 1414 et.seq.

(e)

According to Article XIV of the Declaration of Rights of 1780 provide:

" Every subject has a right to be secured from all unreasonable searches and seizures, of his person, his house, his papers, and his possessions.

All Warrants therefore, are contrary to this right, if the cause or foundation of them be no previously supported by Oath or Affirmation and if the order in the Warrant to a Civil Officer, to make search in suspected places, or to arrest one or more suspected persons, or to seized their property, be not accompanied with a special designation of the persons or object of search, arrest, or seizure and no Warrant ought to be issued, but in cases, and with the formalities prescribed by the Laws (see) T. Taylor, two studies in Constitutional interpretation 41-43 (1969) N. Larson, The history and Development of the Fourth Amendment to the United States Constitution 51-105 (1970) J.Lanski, Search and Seizure and the Supreme Court A study in Constitutional interpretation 30-48 (1966) Stewart, the road Mapp V Ohio and beyond The origins, Development, the future of the Exclusionary Rule in Search-and-Seizure cases, 83 Colum L.Rev. 1365-1369 (1983) supported by:

(1) Fourth Amendment of The United States Constitution provide: The right of the people to be secured in their person, houses, papers, and effect, against unreasonable Searches and Seizure, shall not be violated, and no Warrant shall be issued, but upon Probable Cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and person to be seized.

(2)

Article 1, Sec. 7 of Washington State Constitution provide that: " No person shall be disturbed in his private affairs, or his invaded, without authority of Law ".

(3)

A Warrant based on probable cause is required for a valid arrest unless one of the exceptions to the Warrant requirement applies (see) Kirk V Louisiana, 536 US 635, 122 S.Ct. 2458, 153 L.Ed. 2d 599 (2002) held that: "Firm line at entrance to house may not reasonably be crossed without Warrant, assent exigent circumstances" Warrantless, nonconsensual entry to make felony arrest is unconstitutional (also see) Payton V New York, 445 US 573, 576, 100 S.Ct. 1371, 63 L.Ed. 2d 639 (1989).

(4)

According to Johnson V United States, 333 US at 14, provide: When the right of privacy must be reasonably yield to the right of searches, as a rule, to be decided by Judicial Officer, not by Policeman or Government Enforcement Agent.

Any assumption that evidence sufficient to support a Magistrate's disinterested determination to issue a search warrant will justify the Officers in making a search without a warrant would reduce the Amendment to nullity and leave the people's homes secure only in the discretion of Police Officers.

(5)

Under Washington Constitution, Article 1, Sec. 7 also provide: The closer a Police Officer comes to intruding into a private dwelling the greater the Constitutional protection (see) State V Messini, 100 Wn. 2d 454 (1988).

(6)

In the Court United States V Stubblefield, 621 F.2d 989 (9th Cir. 1980) reference to 621 F.2d 982: The question of under what circumstances an Officer may enter a suspect's home to make a Warrantless arrest has been unsolved by the United States Supreme Court until the Court's until the Court's decision in Payton V New York, 445 US 573 (1989)

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(7)

The Ninth Circuit Court held that: the arrest in both Payton V New York, 445 US 573 (1989) and Obie Riddick cases to be illegal because of the warrantless and nonconsensual entry into the home of the Appellant.

The Ninth Circuit Court emphasized the significance of the boundaries of dwelling:

But the critical point is that any differences in the intrusiveness of entries to arrest are merely ones of degree rather than kind:

(1) The Breach of the entrance to an individual's home

(2) The Fourth Amendment protects the individual's privacy in a variety of settings:

(a) In none is the zone of privacy more clearly defined than when bounded by the ambiguous physical dimensions of an individual's home a zone that finds its roots in clear and specific Constitutional terms:

(b) The right of the people to be secured in their houses shall not be violated.

That language unequivocally establishes the proposition that at very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable Government intrusion.

In Payton, Supra., " in term that apply equally to 'seizure of property' and to 'seizure of persons'.

II

According to the Findings of Fact and Conclusion of Law following 3.5 Hearing on Page 2, Line 10 (2) states that Detective Brooks contacted the Petitioner via Telephone on August 10/2010 to schedule and interview.

On August 11/2010 the Petitioner drove himself to the Tacoma Police Department Headquarters. Detective Brooks escorted the Petitioner into the interview room.

Detective Brooks and Detective Aguirre asked the Petitioner for permission to " audio record " their interview.

The Petitioner gave permission for the interview to be " audio recorded".

Prior to the interview commencing, Detective Brooks properly advised the Petitioner of his Miranda rights using an Advisement of Rights Form.

The Petitioner signed the Advisement of Rights Form " indicating " that the Petitioner understood his Miranda and voluntarily wished to answer questions.

The Petitioner argue that but not limited to:

(i)

If the Petitioner did in fact agreed to have the interview audio recorded. The problem is that Detective Brooks and Detective Aguirre failed to advise him that the interview was been video recorded.

(ii)

If he did signed the Advisement of Rights Form ( Appendix B ) the assumption of him understanding his Miranda rights on the Form is on the part of Detective Brooks and Detective Aguirre part and the Petitioner never stated in words that he voluntarily wished to answer questions.

(iii)

The Petitioner feel that Detective Brooks and Detective Aguirre should have explained to him his Miranda rights in words easily understood and he have a right to remain " silent ".

III

According to the Findings of Fact and Conclusion of Law following 3.5 Hearing, Page 3, Line 14 (7) states that the Petitioner never asked for an Attorney at any time during his contact with Law Enforcement.

The Petitioner argue that but not limited to:

(i)

It is alleged that the Petitioner never asked for an Attorney at any time during his contact with Law Enforcement. The Petitioner argue this is " Patently False " the question was brought up by Detective Brooks asked the Petitioner " would he be willing to take a Polygraph Test " and the Petitioner replied " not without an Attorney ".

The Petitioner think at this point is invoking his right to an Attorney.

At that point Detective Brooks or Detective Aguirre should have stopped and appointed him an Attorney.

But according to Page 3, Line 20 (8) states: At the conclusion of the interview. The Petitioner was allowed to leave.

(a)

The Petitioner argue that Detective Brooks and Detective Aguirre violated Washington State Privacy Act to far as the Petitioner concern in order to avoid a " swearing contest " addressing the Petitioner concern that Detective Brooks and Detective Aguirre failed advise him of his rights and his right to remain silent in words easily understood.

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The Petitioner argue that the State and the Defense Attorney had a copy of this Video Recording in their possession. According to Brady V Maryland, 373 US 83, 10 L.Ed. 2d 215, 83 S.Ct. 1194 (1963) provide: Under the Fourteenth Amendment due process clause of the Federal Constitution's, A State prosecutor is required to disclose material evidence favorable to an accused and failed to do so.

(b)

The Petitioner argue that once he invoked his right to an Attorney on August 11/2010 Detective Brooks and Detective Aguirre should have complied. According to Gideon V Wainwright, 372 US 335, 342, 9 L.Ed. 2d 799, 804, 83 S.Ct. 792, 93 ALR2d 733 (1963) and thereby renders incriminating statement elicited by the Police during the interrogation inadmissible. In Illinois V Escobedo, 28 Ill 2d 11, 190 NE 2d 85 held that: " guiding hands of Counsel" was essential to advise of his rights (see) Powell V Alabama, 287 US 45, 77 L.Ed. 152, 53 S.Ct. 55, 84 ALR 527 (1932) (also) the Sixth Amendment of the United States Constitution (also) Article 1, Sec. 22 of Washington Constitution, therefore, the Petitioner have reason to believe on August 11/2010 his was denied " the assistance of counsel " to advise him.

IV

The Petitioner argue that: On August 13/2010, Detective Graham, Detective Brooks and Detective Miller invaded his home without a Warrant.

(i)

The Petitioner argue that on August 13/2010 Detective Graham, Detective Brooks and Detective Miller Failure to comply with State V Ferrier, 136 Wn. 2d 103 (1998) warning and failure to ask for consent to enter the Petitioner residence and failure to advise the Petitioner of the right to refuse consent and of the right to limit the scope of the consent given before a valid entry is made.

The Petitioner argue that: According to State V Ferrier, 136 Wn.2d 103 (1998) states: This provision in Article 1, sec. 7 of Washington State Constitution differ from the Fourth Amendment in that " unlike the Fourth Amendment, Article 1, sec. 7 of Washington State Constitution clearly recognizes an individual's right to privacy with no express limitations" The residence or residence's consent is invalid under the Washington Constitution Article 1, sec. 7 if the resident was not informed by the Officers to their entry into the dwelling, that,

(1) Consent may be lawfully refused

(2) If consent is given it may be revoked at any time

(3) The scope of the consent may be limited (see) State V Leach, 113 Wn. 2d 735 (1989) (also) State V Impink, 728 F. 2d 1228 (1984) (also) State V Ferrier, 136 Wn.2d 103 (1998) (also) State V Budd, 186 Wn.App. 184 (2015) (also) The right of the people to be secured in their houses shall not be violated.

That language unequivocally establishes the proposition that at very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable Government intrusion.

The Petitioner argue that Whether the Petitioner consented to entry is question of fact, to be determined from all circumstances, any government bears the burden of showing that consent was freely given (see) United States V Hampton, 260 F.3d 832, 835 (8th Cir. 2001) according to: 18 USCS 3109 provide: The Officer may open any outer or inner door or window of a house, or any part of a house, or anything therein, after notice of His authority and purpose, he is refused admittance or when necessary to liberate himself or person aiding him in the execution of the Warrant. (also see) 2010 c8, Sec. 1039, Officer may use force. The Petitioner felt that he had no choice but to open the door of his residence or have his Property damage by Police Officers.

(ii)

The Petitioner argue that: Once Detective Brooks and Detective Miller in the Livingroom with the Petitioner and Detective Graham in the Kitchen with the Petitioner Wife

His argument is that he was " in custody " and ' Miranda warning ' was required.

The Petitioner asked " What is a Seizure " ?

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(a)

Ashley V Sutton, 492 F.Supp. 2d 1230 (2007) held that: 1. Constitutionality of Sutton's Seizure of Ashley:

(a) Was. there a seizure ?:

A person is "seized" when by means of physical force, or a show of authority, his freedom of movement is restrained (see) United States V Mendenhall, 446 US 544 (1980) .

(b)

492 F.Supp.2d at 1246 held that: A seizure violate the Fourth Amendment if it is objectively unreasonable under the circumstances.

(c)

United States V Badmus, 325 F.3d 133 held that: Miranda warning must be given when a person is interrogated while " in custody " Miranda V Arizona, 384 US 436, 444, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

(d)

Tankeleff V Senkoluski, 135 F.3d 235, 242 (1998). held that: " A person is in custody for purpose of Miranda if a reasonable person in suspect shoes would not have felt free to leave under the circumstances".

(e)

United States V Ali, 86 F.3d 275, 276 (2nd Cir. 1996) held that: Even without actual arrest, an accused is " in custody " when Law Enforcement Officials act or speak in a manner that conveys the message that they would not permit the accused to leave ".

(f)

The Petitioner argue that: during the length of time Detective Brooks and Detective Graham and Detective Millerwas in his residence.

He was not free to get up from his Couch as Detective Miller as stood behind him and Detective Brooks standing in front of him and walk outside on his Porch, stand on the sidewalk or walk down the Street to the Cornerstore, therefore, the Petitioner argue that he was under arrest.

(g)

According to Page 4, Line 7 of the Findings of Fact and Conclusion of Law following 3.5 Hearing states that:

The Petitioner agreed to participate in another interview.

The Petitioner disagree with this at this point " what choice did the Petitioner have " but to agree to another interview.

(h)

The Petitioner ask: When does an arrest occurs ?

An arrest occurs when the suspect believes that he or she is not free to leave (see) Florida V Royer, 460 US 491, 501-05, 103 S.Ct. 1319, 75 L.Ed. 2d 229 (1983).

No former words of arrest are required (see) United States V Johnson, 834 F 2d 1191 (5th Cir. 1987).

A detention short of an arrest become so long that it is a De Facto arrest requiring probable cause. (see) Timothy P. O'Neal, Rethinking Miranda Custodial Interrogation as a Fourth Amendment Search and Seizure, 37 UC Davis L.Rev.1109 (2004).

The Petitioner argue: A reasonable person in the Petitioner's position would have understood that he was no longer free to move without consent from Detective Graham, Detective Brooks and Detective Miller but, was arrested and in their custody that required Miranda warning.

According to United States V Bingivenga, 845 F. 2d 593 held that: MIRANDA CUSTODY and FOURTH AMENDMENT SEIZURE stated The United States Court of Appeals of the Fifth and Eleventh Circuit know that " a person has been 'seized' within the meaning of the Fourth Amendment. Only if, in view of all circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.

A panel of the United States Court of Appeals of the Fifth and Eleventh Circuit noted that " the core meaning of both ' Seizure' in the Fourth Amendment sense appears to be the same and of ' Custody ' in the Miranda sense are the same: The restraint of a person's ' freedom ' to walk away from the Police".

The critical difference between the two concepts, however, is that custody arises only if the restraint on freedom is a certain degree... the degree associated with formal arrest.

(i)

The Petitioner argue that: With the invasion of his residence by Detective Graham, Detective Brooks and Detective Miller on August 13/ 2010

(a)

According to a United States Court of Appeals decision held that in: United States V Berry, 670 F.2d 583 (1982) United States Among our most cherished Constitutional rights is the Fourth Amendment's guarantee that " the right of

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the people to be secure in their persons, house, papers and effects against unreasonable searches, shall not be violated, the fundamental nature of this guarantee has been long noted".

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" No right is held more carefully guarded, by the Common Law, than the right of every individual to the possession and control of his own personal, free from all restraint or interference of others, unless by clear and unquestionable authority of Law.

(b)

Deprived the Petitioner since Detective Graham, Detective Brooks and Detective Miller had ample time to secure a Warrant between August 11/2010 and August 13/2010.

(c)

Where in State V Budd, 186 Wn. App. 184 (2015) provide: Where Courts do not look kindly on Law Enforcement failure to obtain a Search Warrant " when Police had ample opportunity to perform the task (see) State V Leach, 113 Wn. 2d 735 (1988).

(d)

The Petitioner argue that when Detective Brooks and Detective Miller escorted him out his residence " he was arrested " for the purpose of ' seizure and custody '.

(e)

The Petitioner argue that in the State of Washington in order to justified an arresting Officer without a Warrant, an Officer must believe that a person " has committed or is about to commit or is in the act of committing a felony ". Not only must the Officer have reason to believe that the person's is guilty, but that belief must be based upon reasonable grounds. Proper cause for arrest has often been defined to be a ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious men believing the accused to be guilty (see) State V Poe, 74 Wn. 2d 425, 445 P.2d 196 (1968) (also see) State V Maxie, 61 Wn. 2d 126, 377 P.2d 435 (1962) provide: No elaboration of the Law. as to when an Officer make an arrest without a Warrant is required (also see) Beck V Ohio, 378 U.S. 88, 13 L.Ed. 2d 142, 85 S.Ct. 223 (1964).

(i).

The Petitioner asks: In turning the question of whether or not the ' record ' in this case can support a finding of ' probable cause ' for the Petitioner's arrest

Whether or not was the Petitioner was under arrest when he was escorted from residence by Detective Brooks and Detective Miller on August 10/2010 in accordance to State V Poe, 74 Wn. 2d 425, 445 P.2d 196 (1968) and State V Maxie, 61 Wn. 2d 126, 377 P.2d 435 (1962).

V.

In referrence to: Findings of Facts and Conclusion of Law following 3.5 Hearing, On Page 5, Line 1(2) states that: Detective Graham " read the Petitioner his rights out loud while placing the form in front of the defendant so that he could read along.

(i).

The Petitioner claim that this statement is ' patently false '.

(ii).

On Page 5, Line 6 (3) states that: Detective Graham asked the Petitioner if he would agree to have the interview recorded.

The Petitioner decline to allow the interview be recorded.

Detective Graham asked the Petitioner if he was willing to make a recording that he was declined to have the interview recorded.

The Petitioner agreed and a recording was made documenting the Petitioner's refusal to allow the interview to be recorded (see Appendix I).

The Petitioner argue that: Transcript in Appendix I violates Laws of Wa. 2006 c38, sec. 1 (1)(b)(i)(ii)(iii) which Detective Graham failed to advise the Petitioner of his Constitutional Rights at the beginning of the Tape as required by Law and failed to state the start and finish time as stated in State V Cunningham, 93 Wash. 2d 823, 613 P.2d 1139 (1980) (also see) State V Mazzante, 86 Wn. App. 425, 936 P.2d 1206 (1997).

(iii).

Page 5, Line 20 (5) states that: He testified that he requested an Attorney and request that the interview be terminated.

The Petitioner claim that he in fact ask Detective Graham for an Attorney and was refused. What the Petitioner did not know that Detective Graham and Detective Brooks had access to the Phone Number to the Department of Assigned Counsel in their possession and failed to give the number to the Petitioner or assign him a appointed Attorney to him.

(iv).

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On Page 5, Line 22 (6) states that: Detective Graham testified that the Petitioner did not request for an Attorney at any time during his contact with the Petitioner on August 13/2010.

The Petitioner argue that this statement by Detective Graham is ' patently false '

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(v)

On Page 6, Line 3 (7) states that: Detective Brooks testified that the Petitioner did not request for an Attorney at any time during his contact with the Petitioner on August 13/2010. The Petitioner argue that this statement by Detective Brooks is ' patently false '.

(vi).

On Page 6, Line 7 (8) states that: Detective Miller testified that the Petitioner did not request for an Attorney at any time during his contact with the Petitioner on August 13/2010. The Petitioner argue that this statement by Detective Miller is ' patently false ' solely on the ground that Detective Miller was standing in the ' Hallway ' when he asked Detective Graham for an Attorney and was no way Detective Miller could have overheard that conversation.

VI.

The Petitioner argue that: He was under arrest when he entered the Police Sub-Station. Without Family, Friends and Attorney.

The Petitioner was totally alone in that Conference Room with Detective Graham and Detective Brooks.

It is clear in the Petitioner's mind that he clearly asked Detective Graham for an Attorney and denied the Petitioner of that right.

The Petitioner argue that: in the Court of Miller V Pate, 386 U.S. 1, 17 L.Ed. 2d 690, 87 S.Ct. 785 held that: Defendant's conviction violated due process since Police 'knowingly' gave material false testimony at Trial, Prosecutor's allowing the false testimony go 'uncorrected' was a clear violation of the defendant's due process right.

Napue V Illinois, 360 US 264 Held that: First: It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, fall under the Fourteenth Amendment (see) Pyle V Kansas, 317 US 213, 87 L.Ed. 214, 63 S.Ct. 177 (1942).

The principle that a State may not knowingly use false evidence, including false testimony, implicit in any concept of ordered liberty, do not cease to apply merely because the false testimony goes only to the credibility of the witness.

360 US at 270 provide: It is consequence that the falsehood bore the witness' credibility rather than directly upon defendant's guilty. " A lie is a lie, no matter what its subject.

In the Court of Pyle V Kansas, 317 US 213, 214, 87 L.Ed. 214 (1942) held that: The Constitution requirement of due process in safe guarding the liberty of the Citizen against deprivation through action of the State embodies the fundamental conception of Justice which lie at the base of the Civil and Political Institution of the United States. The requirement of due process is not satisfied where a conviction is obtained by the presentation of testimony known to the prosecutors authorities to be perjured. The action of prosecuting officers on behalf of the State may constitute State action within purview of the due process clause of the Fourteenth Amendment where Judicial action is State action and a decree that denies equal protection of Law is denial by the State within the meaning of the Fourteenth Amendment. State Courts equally with Federal Courts are under an obligation to guard and enforce every right secured by the Federal Constitution. Where the action of a State clearly violates the term of the Federal Constitution. It is the duty of supreme Court of the United States so to declare.

1

According to 2 L.Ed. 2d 1575 and 3 L.Ed. 2d 1991 stated: Unfairness or corruption of Officers in performance of administrative functions in Civil and Criminal cases in State Court as in violation of the Fourteenth Amendment.

2

98 ALR 411 States: Suppression of evidence by prosecution in criminal cases as vitiating conviction under principles of due process of Law.

According to State V Cory, 62 Wn. 2d at 377, 382 P.2d 1019, (1963) (citing) Glasser, 315 US 60, 86 L. Ed. 680 (1942) held that: 62 Wn. 2d at 373 the right to Counsel is protected by the Fifth Amendment.

According to 62 Wn. 2d at 376 The Supreme Court of Washington think it is futher true that the right to have assistance of Counsel is so fundamental and absolute that its invalidates the Trial and require a verdict of guilt to be set aside, regardless of whether prejudice was shown to have resulted from denial. " A denial in a criminal case may not legally be found guilty except in a Trial which his Constitutional rights are scrupulously observed. No conviction can stand, no matter how overwhelming the evidence of guilt, if the accused is denied the effective assistant of counsel, or any other element of due process of Law without which he cannot be deprived of Life and Liberty (see) 21 Fordham L.Rev. 175-78 (1952) (also see) 7 Wyoming L.J. 44-47 (1952).

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The Petitioner also allege that pursuant to Amendment Fourth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, sec.7 also Article 1, sec. 22 of the Washington State Constitution to be free of charges on the basis of deliberately fabricated evidence by the Government (see) Pilato V Rhodes, 2013 US Dist. Lexis 18826 (2013)(also see) Devereaux V Abbey, 263 F.3d 1079 (9th Cir. 2001) (also see) Contanich V Department of Social and Health Serv., 627 F.3d 1101.

According to: R.C.W. 9A.72.010 (1) or Laws of 2001 c171, Sec. 2 provide:

(1) "Materially false statement" means any false statement Oral or Written. Regardless of its admissibility under the rule of evidence. Which could have affected the course or outcome of the proceeding whether a false statement is material shall be determined by the Court as a matter of Law.

The Petitioner argue that: No such determination by the Trial Court was ever made.

According to: R.C.W. 9A.36.175 or Laws 2001 c308, Sec. 2 Making a False or Misleading statement to a public servant.

The Petitioner also argue that: The State failure to submit the Audio and Video Recording of the interview on August 11/2010 would terminate the 'swearing' contest between the Petitioner and Detective Brooks and Detective Aguirre (see) Brady V Maryland.

the Petitioner argue that: In the Court of Arizona V Edwards, 451 US 477, 484-85, 101 S.Ct. 1889, 68 L.Ed. 2d 378 (1981) held that: Admission of confession obtained from defendant at custodial interrogation on day following defendant's request for Counsel, held violative of Fifth and Fourteenth Amendments right to have Counsel present at custodial interrogation.

Held:

The use of Petitioner's alleged confession against him at his Trial violated his right under the Fifth and Fourteenth Amendments to have Counsel present during custodial interrogation, as declared in Miranda 384 US 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602 (1966) Having exercising his right on August 13, 2010 to have Counsel present during custodial interrogation. Petitioner did not at anytime during custodial interrogation did the Petitioner waived that right on August 11 and 13, 2010.

The Petitioner argument that: Detective Graham, Detective Brooks and Detective Miller falsely testified that he did not ask for an Attorney and their statements is ' patently false "

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Emmanuel J. Finch

Date: 12/23/17