

24-6208

No. _____

FILED

OCT 09 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Luciano Molina Rios

— PETITIONER

(Your Name)

vs.

State of Washington

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Washington State Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Luciano Molina Rios (393118)

(Your Name)

Coyote Ridge Corrections Center
Unit G, Cell GA-26

(Address)

P.O. Box 769
Connell, WA 99326

(City, State, Zip Code)

(Phone Number)

RECEIVED

OCT 17 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Question(s) Presented

- Does the 4th Amendment to the U.S. Constitution protect against law enforcement using a cellphone to track a person inside of their home without a warrant?
- Do the 4th and 14th Amendments to the U.S. Constitution protect against the using of evidence obtained by an invalid warrant, which was obtained by law enforcement willfully misleading the judge?
- Does impeaching members of law enforcement and the Informant in this case, benefit Mr. Rios?
- Should the State of Washington granted Mr. Rios' request for a Frank's Hearing?

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:

┌ Luciano Molina Rios, DOC# 393118
Unit G, Cell GA-26
Coyote Ridge Corrections Center
P.O. Box 769
└ Connell, WA 99326 ┐

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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 _____ 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☐ is unpublished.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☐ is unpublished.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 A-1 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 Washington State Supreme Court court appears at Appendix A-1 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 _____.

☐ 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 September 4, 2024.
A copy of that decision appears at Appendix A-1.

☒ A timely petition for rehearing was thereafter denied on the following date: September 19, 2024, and a copy of the order denying rehearing appears at Appendix A-2.

☐ 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).

Constitutional and Statutory Provisions Involved

- 4th Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- 14th Amendment: 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 to any person within its jurisdiction the equal protection of the laws.
- Article I, Section 7 (Washington): No person shall be disturbed in his private affairs, or his home invaded, without authority of law.
- Rule 609 (Oregon): Evidence of a criminal conviction is admissible if the crime was punishable by death or imprisonment for more than one year. This rule states that evidence of a criminal conviction can be used to impeach a witness' credibility.

1 Luciano Molina Rios, Petitioner, respectfully asks this Court to grant
2 Certiorari and allow Rios' Frank's Hearing request.

3
4 Due to violations of Article I, Section 7 of the Washington State
5 Constitution, and the 4th and 14th Amendments of the U.S. Constitution,
6 Rios asks this Court to grant his Frank's Hearing request.

7
8 Statement of the Case

- 9 1. Law enforcement, without a warrant, used Rios' cellphone to track Rios
10 inside of his home.

11
12 "I wrote a ping for his phone and he has stayed there each night... I
13 was hoping you could write a warrant for him/car/apartment this week
14 and we could hit it when your team is available" (Appendix O).

15
16 Per Zwick's own words, in his email, Detective Zwick wrote a ping and used
17 it to track Rios' movements through Rios' phone, confirming that Rios was
18 inside of his home. He did this before obtaining a warrant—before even
19 asking for a warrant. This is a violation for both Article I, Section 7
20 and the 4th Amendment.

- 21
22 2. The information provided by Detective Zwick and the CI about the "re-up"
23 was not credible.

24
25 "My new friend gets ~~meth~~ meth from his source named Pedro" (Appendix B).

26
27 "My friendly just talked to him. He said he was tripping for Seattle to get
28

1 more. Would call us around 4. I'll monitor pings and see what happens
2 today" (Appendix B).

3
4 "I, Joshua Zwick... This affidavit will detail an ongoing narcotics
5 investigation into 'Pedro' including a controlled purchase of methamphetamine
6 from 'Pedro'" (Appendix C).

7
8 "I had learned from Deputy Zwick that they had a confidential reliable
9 informant who had informed them that there was a subject that the
10 informant knew as Pedro who was distributing large amounts of
11 methamphetamine in the Portland/Vancouver area" (Appendix D).

12
13 "My probable cause is based on the following... Deputy Zwick then directed
14 the CRI to contact PEDRO at (360) 723-8094 in order to arrange a
15 purchase of an amount of methamphetamine... On the morning of 11/4/15,
16 I was again contacted by Deputy Zwick who informed me that the same
17 CRI had just told him that PEDRO was driving north to Seattle,
18 Washington to meet with a drug source and 're-up' (obtain a new supply
19 of drugs). The CRI told Deputy Zwick that PEDRO also agreed to deliver
20 another commercial amount of methamphetamine to the CRI when PEDRO
21 returned to Vancouver" (Appendix E).

22
23 Search Warrant: "Seize items of true identification of 'Pedro', the controlled
24 substance methamphetamine" (Appendix F).

25
26 "Based upon the above information, I have probable cause to believe that
27 methamphetamine, evidence of the crime of Unlawful Possession (ORS 475.894),
28

1 and Unlawful Delivery (ORS 475.890) of a Controlled Substance Methamphetamine
2 and items of true identification are associated upon the person of "Pedro"
3 (Appendix F).

4
5 Detective Zwick and the CI's focus was buying methamphetamine from "Pedro".
6 There is nothing in the record, up to the point of arrest, that suggested
7 anything other than methamphetamine.
8

9 The story layed out by law enforcement seems clear. The CI purchased
10 methamphetamine through a controlled buy. Later (timeframe unknown), the
11 CI, with law enforcement, set up a second controlled buy of more
12 methamphetamine from "Pedro." According to the CI, "Pedro" had to make
13 a run up to the Seattle area to "re-up" his supply of methamphetamine
14 to make the sale to the CI (because the reasonable person could understand
15 that methamphetamine was the only drug that law enforcement associated
16 with "Pedro", and the only drug that the CI claimed to have bought from
17 "Pedro").
18

19 However, the information provided by the CI was not credible. When "Pedro"
20 was pulled over on his way back from the "re-up," there was no methamphetamine
21 anywhere - not on "Pedro," not in the car he was driving, not even in the
22 other car that was pulled over on I-5. But yet, according to the CI,
23 "Pedro" needed to "re-up" before making the sale to the CI, and
24 methamphetamine was the only drug the CI purchased from "Pedro."
25

26 Detective Zwick relied on the information provided by the CI, and the
27 CI was wrong.
28

1 Furthermore, law enforcement stated that the amount of methamphetamine the
2 CI purchased from "Pedro" fit in a plastic sandwich bag. A plastic sandwich bag
3 is not that big. The question being, if the numbers reported by law enforcement
4 are correct (Appendix E), then "Pedro" (Rios) had "14.3 pounds of suspected
5 methamphetamine" in the apartment (which according to law enforcement, "Pedro"
6 delt out of), why would he need to "re-up" to fulfill a plastic sandwich
7 bag size order when he had 14.3 pounds of the requested drug within
8 arms reach?

9
10 The answer is, that he wouldn't. The trip to Seattle was just that,
11 a day trip to get out of town. This is supported by the evidence and by
12 law enforcement, who saw nothing illegal and found nothing illegal on
13 "Pedro" or in the vehicle he was driving. Law enforcement witnessed no
14 illegal activity by "Pedro" as they followed him up north, around the Seattle
15 area, before pulling him over in Vancouver. Law enforcement made assumptions,
16 but witnessed no actual illegal activity.

17
18 Furthermore, the heroin found in the purse of another person, who was in a
19 different car, had nothing to do with Rios ("Pedro"), and not supported by
20 Detective Zarick's investigation of methamphetamine, nor supported by the
21 information supplied by the CI.

22
23 3. There was one controlled buy - not two.

24
25 "This is buy number 1... The CRI told me the CRI could buy a commercial
26 amount of methamphetamine from a Hispanic male named Pedro... I issued
27 the CRI an amount of prerecorded MCSO SIU investigative funds to
28

1 purchase the methamphetamine from Pedro" (Appendix K).

2
3 Testimony of Wick:

4 "We used a CRT and conducted controlled buys from Pedro."

5 ...

6 "Do you recall how many during this investigation took place in Clark
7 County?"

8 "At least two."

9 ...

10 "Okay. And then on the second occasion, was it the same?"

11 "That we followed him afterwards on that occasion to U-102."

12 "You followed him back to that --"

13 "Yes."

14 "Okay. But the event occurred again in the parking lot?"

15 "Yes, yes, sir."

16 "...did you indicate that on the second controlled buy investigators were
17 actually able to observe this Pedro who later you were able to identify
18 as Luciano Molina Rios..."

19 "Yes" (Appendix G).

20
21 Testimony of Jones:

22 "How long was it between the first and second controlled buys?"

23 "I don't recall that either" (Appendix G).

24
25 Testimony of Ferguson:

26 "And did you see -- and then where -- where in relation to the apartment
27 did the second controlled buy take place -- or the meeting between the CT

1 and the -- "

2 "I didn't have an eye on that one... I don't recall exactly where I was."

3 "Okay. And then on either of those occasions did you see Pedro either
4 enter or leave the apartment yourself?"

5 "On the first one..." (Appendix G).

6
7 Testimony of Hall:

8 "And so there, isn't it true, that you originally indicated that there had been
9 two controlled buys by Mr. Rios in support of your request for the search
10 warrant?"

11 "To clarify, I was referring to the reliability and the credibility of the
12 confidential reliable informant."

13 "Okay. You're giving that to the judge by saying that there had been these
14 controlled buys?"

15 "Well, I'm not referring to any specific controlled buys. I'm just saying
16 that this person had participated in a controlled buy for reliability purposes."

17 "And didn't you say -- didn't you type in two controlled buys?"

18 "I put in at least two controlled purchases of narcotics."

19 "And then you marked over that though, correct?"

20 "Yes, sir."

21 "And you put one?" (Appendix H).

22
23 Testimony by Ferguson:

24 "I believe that they were trying to set up a controlled buy again with
25 the informant."

26 ...

27 "And if that controlled buy was going to happen, that would have been
28

1 supervised or initiated by Deputy Zwick; is that correct?"

2 "Presumably."

3 "Because he was the one that was working with the informant; is that right?"

4 "Correct."

5 "So that was your understanding about what your day was looking like for
6 November 4th was that you were going to be the eye for a controlled buy
7 on that day?" (Appendix J).

8
9 Affidavit for Search Warrant: "this CRI has participated in at least
10 ~~two~~ ^{one} controlled purchases of narcotics for law enforcement in the past.
11 In ~~each~~ ^{that} instance..." (Appendix I).

12
13 Detective Hall, while on the stand, tried to justify his actions, and that by
14 crossing out "two" and writing "one," that more than one controlled buy
15 could have taken place. However, the word "that," which took the place of the
16 crossed out word "each," is singular and therefore points to a single controlled
17 buy. Detective Hall lied.

18
19 Rios respectfully asks for a copy of, and for this Court to review, the original
20 Search Warrant Statement presented to the Honorable Judge Schreiber
21 by Detective Shane Hall. There is reason to believe, per cross-examination
22 of Detective Hall (Appendix H) that Detective Hall altered or changed
23 (crossed out the typed words and handwritten changes - as seen in Appendix I)
24 the original Statement "after" Judge Schreiber signed it.

25
26 Detective Zwick committed perjury on the stand when he purposefully
27 lied about there being two controlled buys, when, at most, there was
28

1 only one. There is no corroborating evidence or testimony to support
2 the second controlled buy.

3
4 The second controlled buy was to happen on November 4, 2015 when
5 "Pedro" returned to the Vancouver area to meet up with the CI. But
6 that controlled buy never took place. Law enforcement from Clark
7 County acted in haste because they wanted the drug bust for themselves.
8 Per Zwirk, through the information passed on to him by his CI, "Pedro"
9 should have had a commercial amount of methamphetamine on his
10 person or in his car from his "re-up" supply run.

11
12 But since Zwirk and the CI are both not credible, and not acting on
13 credible information, there were no drugs found with "Pedro" when he was
14 pulled over. Therefore, there was no probable cause for law enforcement
15 from Clark County to move forward. They had no probable cause to
16 arrest Rios. They had no probable cause to go to the apartment. All
17 of the evidence obtained as a result of the vehicle stop needs to be
18 suppressed.

19
20 4. The CI was not credible as a witness, and therefore impeachable, and
21 law enforcement knew that.

22
23 "I had learned from Deputy Zwirk that they had a confidential reliable
24 informant who had informed them that there was a subject that the
25 informant knew as Pedro who was distributing large amounts of
26 methamphetamine in the Portland/Vancouver area" (Appendix D).

1 "As to the informant's motivation, this CRI is acting in exchange
2 for favorable consideration regarding a pending drug charge. A criminal
3 history search revealed that this CRI has no criminal history"
4 (Appendix I).

5
6 Testimony of Zwick:

7 "One second, Did your informant have criminal convictions?"
8 "No." (Appendix L)

9
10 "The CRI has received a promise for consideration in exchange for
11 the information provided herein... The court should also be advised
12 that the informant has been convicted of one or more crimes that
13 could be used to impeach the informant under ORS 40.355 'OEC. 609'
14 if the informant were called as a witness in a criminal trial"
15 (Appendix L).

16
17 Oregon Rule 609 is a rule of evidence that addresses the admissibility of
18 criminal conviction evidence to impeach a witness' credibility: Evidence of
19 a criminal conviction is admissible if the crime was punishable by death
20 or imprisonment for more than one year. This rule states that evidence of a
21 criminal conviction can be used to impeach a witness' credibility.

22
23 Simply put - Zwick used a drug addict, with a prior conviction(s) as an informant.

24
25 "The CRI stated that he/she has personally purchased and/or witnessed
26 others purchase methamphetamine from Pedro on at least 3 occasions in the
27 last two months... As to the informant's basis of knowledge, the CRI

1 has been in the drug culture for years and can identify controlled substances
2 by sight to include methamphetamine... This CIA has also used and sold
3 methamphetamine in the past" (Appendix I).

4
5 As prosecutor Mr. Gasperino stated, "Joshua Zwick, who was the detective
6 I had been -- he's the lead case officer for the investigation that lead
7 to these arrests" (Appendix L).

8
9 Detective Zwick never informed the Judge, or purposefully omitted from his
10 affidavit, that the CIA had a criminal history. In fact, even under oath,
11 Zwick stated that the informant had no criminal history. Zwick
12 committed perjury. Zwick lied to the Judge to obtain a warrant, and
13 he lied to the jury during trial. All evidence stemming from Zwick's
14 investigation, because it was his investigation, should be suppressed, and both
15 Detective Zwick and the CIA impeached.

16
17 5. The heroin in Santiago Santos' purse was not connected to Rios.

18
19 "I contacted SANTIAGO SANTOS... I then located a large plastic bag in the
20 bottom of her purse that contained multiple pounds of a dark substance... heroin.
21 SANTIAGO SANTOS stated that the driver, GONGORA-CHI, had obtained
22 the heroin in Seattle earlier that day and placed it in her purse... I
23 then contacted the driver of the dark gray Toyota TC, Luciano MOLINA
24 RIOS... I then contacted the owner of the vehicle, SANTIAGO SANTOS,
25 who was standing nearby at the white Honda Accord... Investigators discovered
26 a custom installed button concealed in the fuse box area - indicating the possibility
27 of a trap door or secret compartment in vehicle" (Appendix M).

1 According to law enforcement, Santiago Santos stated that it was Gongora-Chi,
2 not Rios, who had obtained the heroin and placed it in her purse.

3
4 But why did Santiago Santos have heroin in her purse? The reasonable person
5 would think that if she owned the car that Rios was driving, which she
6 did, and therefore being her car, Santiago Santos would have known about the
7 so-called secret compartment. She would have put the heroin in the secret
8 compartment rather than her purse. But she didn't. She could have even
9 put the heroin in the trunk of the car she was in, and she still could have
10 blamed Gongora-Chi for the heroin.

11
12 Which supports that there was no probable cause to connect Rios to the
13 heroin. Rios was arrested for Conspiracy, and then booked for Conspiracy
14 to Possess a Controlled Substance with the Intent to Deliver - Heroin.

15
16 This was a "witch hunt." Law enforcement predetermined that Rios was
17 guilty of selling methamphetamine, and when they found nothing on him to
18 support that guilt, they connected him to heroin found in the purse of a
19 woman who was in a different car. A woman who was not arrested for the
20 heroin, even though she possessed the heroin, and law enforcement, through
21 their investigation, stated that they connected her with Rios through the
22 car that he was driving and the apartment he lived in. Law enforcement
23 wanted "Pedro", and so they went after him despite the facts in front
24 of them and the laws protecting Rios.

25
26 Law enforcement thought, based on faulty information, that "Pedro" would be coming
27 back from Seattle with a commercial amount of methamphetamine on his way
28

1 to make the second controlled buy with the C.I. Clark County wanted
2 that bust, and so they pulled "Pedro" over and found nothing. So to save
3 face, they connected Rios to the heroin when there were no facts, no
4 evidence, no history, nor probable cause to make the heroin connection.
5

6 6. As part of the Frank's Hearing, Rios requests the video and audio from
7 law enforcement body cams, specifically to include Detective Shane Hall's
8 body cam. As well as audio and video from the officer's dash cams.
9

10 Because Hall willfully and purposefully lied to the Judge to secure a
11 warrant(s) and then perjured himself on the stand.
12

13 "Before going to jail, MOLINA RIOS admitted that he and GONGORA-
14 CHI went to Seattle to pick up the heroin... He [Rios] responded by
15 saying that there were indeed additional drugs, a handgun, a rifle, and an
16 unknown amount of money at the apartment" (Appendix M).
17

18 Testimony of Hall:

19 "But to sum up Mr. Rios's response to you, you're saying he was highly
20 cooperative?"

21 "I'm saying he was cooperative."
22

23 "...
24 "He told you about his involvement in a number of crimes, isn't that
25 correct?"

26 "Yes." (Appendix H)
27
28

1 Detective Hall lied. The video with audio (or audio by itself) would prove
2 this. The reasonable person could agree that a person in Rios' position
3 on the side of I-5 (who was just pulled over with no money,
4 drugs, or weapons in the car or on his person) would not start talking
5 on himself for no apparent reason. Even after being arrested on
6 Conspiracy, there is nothing that would make the reasonable person
7 believe that the arrested person would "spill their guts" to get themselves
8 into more trouble. Hall's story is not logical.

9
10 Shane Hall lied, and he was allowed to, because Clark County wanted the
11 credit for the drug busts. But when they came up short and no commercial
12 amount of methamphetamine were found, Hall made up a story to establish
13 probable cause, because the original probable cause used to pull over
14 "Pedro" was based on bad intel provided by Zurich and the C.I. And
15 when that did not pan out, Hall made up a story. There is no
16 corroborating evidence or testimony to support Hall's story of the
17 conversation between Hall and Rios. However, the audio files would
18 prove Hall lied, and all the evidence stemming from that would have
19 to be suppressed.

20
21
22
23 Luciano Molina Rios, DOC#393118

24 Unit G, Cell GA-26

25 Coyote Ridge Corrections Center

26 P.O. Box 769

27 Connell, WA 99324

Reasons for Granting Petition

I. Rios argues that the pinging of his cellphone as surveillance of his home constituted an improper search under both the 4th Amendment to the U.S. Constitution and Article I, Section 7 of the Washington State Constitution.

Article I, Section 7 contains two distinct objects of protection: a person's "private affairs," and a person's "home," which both are an issue in this case. Similar to State v. Young (123 Wn.2d 173, 867 P.2d 593 (1994)), where the State Supreme Court found that the Constitution prohibits infrared surveillance of a home without a warrant; the pinging of Rios' cellphone to know when he is in his home falls under that same thought process.

Noting that "a police officer's visual surveillance does not constitute a search if the officer observes an object with the unaided eye from a nonintrusive vantage point" (Young). This did not happen in Rios' case, Detective Zwick specifically referenced the pinging of Rios' cellphone to determine when Rios was home (Appendix O). Zwick, and the other officers, could not see into Rios' apartment with their naked eye.

According to Young, "Our decisions have consistently reflected the principle that the home receives heightened constitutional protection. Generally, a person's home is a highly private place. State v. Barber, 48 Wn. App. 583, 589, 740 P.2d 863, 79 A.L.R. 4th 491, review denied, 109 Wn.2d 1014 (1987). In no area is a [person] more entitled to his privacy than in his or her home. State v. Solberg, 122 Wn.2d 688, 861 P.2d 460 (1993). For this reason, 'the closer officers come to intrusion into a dwelling, the greater the constitutional protection.' State v. Chairman, 100 Wn.2d 814, 820, 676 P.2d 419 (1984)."

Under Article I, Section 7, like the 4th Amendment, a person's home can be invaded even though there is no physical entrance into the house. The constitutional line of privacy that encircles the home is more than just a barrier to physical penetration. When sense-enhancing devices allow police to 'see through the walls' of a home, the home has been invaded for purposes of Const. art. 1, § 7. We hold the infrared surveillance violated the Fourth Amendment" (Young).

"Karo involved an electronic beeper which was taken inside a home. Karo contains the Supreme Court's most recent statement on the use of a sensory enhancement surveillance device on a private residence. The Court found the warrantless monitoring of the electronic beeper inside a private residence, a location not observable by the naked eye, violate the Fourth Amendment, United States v. Karo, 468 U.S. 705, 714, 82 L. Ed. 2d 530, 104 S. Ct. 3296 (1984)" (Young).

II. "The necessary showing of reliability is also relaxed if the identity of an informant is known - as opposed to being anonymous. This is so because there is less risk of the information being a rumor or irresponsible conjecture which may accompany anonymous informants. An identified informant's report is also less likely to be marred by self-interest" (State v. Kinsey, 2005 Wash. App. LEXIS 417).

The trial lawyer attempted, in Rios' case, to reveal the identity of the CI, but the state kept that from happening, because it is clear to anyone who had access to the probable cause affidavit, knew that the CI would be impeached if he was put on the stand (Appendix L). Plus the CI had a self-interest in helping law enforcement so that he would get no or a reduced sentence in his pending criminal

conviction. And the facts of the case show that the information supplied by the
C.I. to Zwick concerning the "re-up" of methamphetamine for the second
controlled buy turned out to be a "rumor or irresponsible conjecture."

III. The second controlled never happened. This is clear. Officers Zwick and Hall
are still trying to hold on to the lie that there were two controlled buys.
This lie of two controlled buys was told to the judges who were there to
establish probable cause to issue warrants. Furthermore, Zwick committed perjury
on the stand when he lied to the Court and jury about two controlled buys.
While on the stand, Hall tried to justify his reasons for altering the affidavit
of the number of controlled buys after he lied to the judge who issued the
warrant(s).

IV. The heroin found during the traffic stop cannot legally be tied to Rios. And the
confession that Hall claims Rios gave him never happened. The audio and video
(especially the audio) from the traffic stop - of the conversation between Hall and
Rios - will prove that Detective Hall is lying.

V. Rios' constitutional rights under Article I, Section 7 of the State Constitution
and the 4th Amendment to the U.S. Constitution were violated by the warrantless
pinging of Rios' cellphone to track him inside of his home.

Law enforcement's purposeful omissions and reckless disregard for the truth
in obtaining warrants violated Rios' constitutional rights under Article I, Section 7
and the 4th Amendment, as well as Rios' rights of due process under the
14th Amendment.

1 Law enforcement using the word of the CI violated Rios' constitutional rights
2 of due process under the 14th Amendment, because the CI was not credible and
3 is impeachable. And Rios' constitutional rights under Article I, Section 7 and
4 the 4th Amendment were violated because the word of that not credible and
5 impeachable CI was used as the foundation of the warrants, that lead to
6 Rios' arrest and conviction.

7
8 Even in re-capping the case, the State purposefully blurred the lines of truth
9 and fact. "Mr. Molina Rios had previously sold controlled substances to a
10 CRI on multiple occasions" (Appendix N).

11
12 There are no facts, nor evidence, to support this claim. There may have been one
13 controlled buy, and so if the CI bought "controlled substances" "on multiple
14 occasions", he did so outside of being a CI for law enforcement, which
15 confirms that he is a drug addict and further discredits his word as a CI.

16
17 VI. This is about a Frank's Hearing, and getting this Court to allow the Frank's
18 Hearing to take place.

19
20 Everything in this Writ of Certiorari to grant Rios' Frank's Hearing Motion
21 is true and accurate. And before making their determination, Rios respectfully
22 asks this Court to consider two key elements:

23
24 1. Law enforcement has already stated and confirmed that the CI is impeachable.
25 Law enforcement has agreed to this fact in their own words: "The court should
26 also be advised that the informant has been convicted of one or more crimes
27 that could be used to impeach the informant." (Appendix L).

2. The State has already stated and confirmed that Detective Zwick is impeachable. The State has agreed to this fact in their own words:

"Here, as Molina Rios points out, the search warrant affidavit in Washington, as well as the pretrial testimony by Multnomah County Deputy Joshua Zwick, indicate that the CI... had not been convicted of any crimes... The search warrant affidavit authored in Oregon by Multnomah County Deputy Zwick, however, describes the CI... as having 'been convicted of one or more crimes that could be used to impeach the informant'... But this apparent inconsistency ... even if the evidence was somehow admissible it only would have been admissible to impeach Deputy Zwick" (Appendix N) (emphasis added).

All the parties (the State, law enforcement, and Rios) agree that both the CI and Detective Zwick can be impeached. Rios is asking this Court to also agree, therefore, impeaching the CI and Zwick, and suppressing the evidence stemming from, or related to, Zwick's investigation, which includes the CI.

VII. A Frank's Hearing is not about innocence or guilt. It is about evidence and if that evidence can legally be used against Rios. The State is wrong in part when they state that the admissibility of the evidence "would have been admissible to impeach Deputy Zwick, but could not have changed the fact of the guns and drugs found in Molina Rios's room and possession" (Appendix N).

It is true that Zwick is impeachable. It is also true that guns and drugs were found in an apartment. But that same truth also highlights the fact that the only way that law enforcement could search the apartment, and in

connecting Rios to the "guns and drugs," was to violate Rios' constitutional rights. It was due to the violation of Article I, Section 7 and the 4th Amendment that law enforcement came to find money, drugs, and guns in the apartment. The evidence needs to be suppressed.

Probable cause was founded upon false statements, "A defendant is entitled to an evidentiary hearing upon making a 'substantial preliminary showing' that an officer of the state knowingly or recklessly made a false statement that was the basis of a court's probable cause finding" (State v. Rakosky, 79 Wn. App. 229, 901 P.2d 364 (1995)).

VIII. For Rios to be successful in his Franks' Hearing request, he must show:

- 1) allegations of deliberate falsehood or of reckless regard for the truth,
- 2) the allegations must be accompanied by an offer of proof,
- 3) the allegations should be accompanied by supporting reasons, and
- 4) show how he was prejudiced.

Rios has demonstrated each of these 4 points. This entire Writ of Certiorari shows deliberate falsehood and reckless regards for the truth. Rios offers proof through his Appendix of supporting documents. This Writ of Certiorari starts off with supporting reasons. And Rios has shown prejudice by having his constitutional rights violated. Rios has met the requirements for this Court to grant his Franks' Hearing request.

Law enforcement tracked Rios in his home when they pilaged his phone without a warrant. Law enforcement lied to judges to get warrants. The state, including law enforcement, agree that both the CI and Detective Zwirk

1 are impeachable. The traffic stop did not produce the results that law
2 enforcement were promised. Rios had no money, drugs, or guns on him or in
3 the car he was driving. There was no probable cause to search the
4 apartment.
5

6 A successful Frank's Hearing in Rios' favor will impeach Zwirk and the GE,
7 find the warrants invalid, and suppress all the evidence obtained after
8 law enforcement invaded Rios' home with "sense-enhancing" devices
9 without a warrant.
10

11 Which leaves, at most, a single controlled buy by an informant who has
12 been impeached, conducted by Zwirk who has been impeached, with no recorded or
13 marked money or evidence.
14

15 IX. Conclusion

16 This Court should grant Rios' Writ of Habeas Corpus, and therefore granting
17 a Frank's Hearing.
18

19 Respectfully submitted,

20 Rios

21 Luciano Molina Rios

22 Petitioner, Pro Se

23 Luciano Molina Rios, DOC # 393118

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25 Coyote Ridge Correctional Center

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rios

Date: 10/9/2024

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