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**GRANT COUNTY DISTRICT COURT  
FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	Case No. #EPC033031 EPP CN
	)	
Plaintiff,	)	<b>MOTION TO DISMISS</b>
v.	)	
	)	
GAVIN D. SEIM,	)	
	)	
Defendant.	)	

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**ISSUE PRESENTED:**

The defendant respectfully requests that the Court dismiss all the charges due to insufficient evidence.

**FACTS:**

**Lack of evidence.**

No articulated facts or evidence of the criminal charges are present. We submit that there is no cause to proceed and that no rational argument for the arrest or charges exists for the following reasons.

Article 1 Section 7 of the Washington State Constitution states that:

*“No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”*

1 CrRLJ RULE 2.2, a (2) - WARRANT OF ARREST OR SUMMONS UPON

2 COMPLAINT

3 *Probable Cause. A warrant of arrest must be supported by an affidavit, a*  
4 *document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn*  
5 *testimony establishing the grounds for issuing the warrant. Sworn testimony shall be*  
6 *recorded electronically, stenographically or by any reliable method. The evidence shall*  
7 *be preserved. The court must determine there is probable cause to believe that the*  
8 *defendant has committed the crime alleged before issuing the warrant. The evidence*  
9 *shall be subject to constitutional limitations for probable cause determinations and may*  
10 *be hearsay in whole or in part.*

13 CrRLJ RULE 3.2.1 PROCEDURE FOLLOWING WARRANTLESS ARREST.

14 Probable Cause Determination.

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16 *“(b) How Determined. The court shall determine probable cause on evidence*  
17 *presented by a peace officer or prosecuting authority in the same manner as provided for*  
18 *a warrant of arrest in CrRLJ 2.2. In making the probable cause determination, the court*  
19 *may consider an affidavit, a document as provided in RCW 9A.72.085 or any law*  
20 *amendatory thereto, or sworn testimony, and further may examine under oath the affiant*  
21 *and any witnesses the affiant may produce. Sworn testimony, including telephonic*  
22 *statements, shall be recorded electronically, stenographically, or by reliable method. The*  
23 *written or recorded evidence considered by the court may be hearsay in whole or part.*  
24 *The evidence shall be preserved and shall be subject to constitutional limitations for*  
25 *probable cause determinations.”*  
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*RCW 9A.72.085*

*(1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter in an official proceeding is required or permitted to be supported, evidenced, established, or proved by a person's sworn written statement, declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved in the official proceeding by an unsworn written statement, declaration, verification, or certificate, which:*

SECTION 7 of the Washington State Constitution:

“INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

Section 22 of the Washington State Constitution also states “...to demand the nature and cause of the accusation against him,”

No statement of how any crime occurred appears to be entered into any official reports. The officers affidavit lacks articulated details for the cause of accusation and grounds for the charges to be brought. RCW 9A.46.020 and RCW 9a.76.020 are the charges filed, and the state has not articulated either harassment or interference; instead presenting personal expressions and feelings. The incident in question was nothing more than non-threatening speech, which is protected under Article 1 Section 5 of the Washington State Constitution.

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CrR RULE 2.3 - SEARCH AND SEIZURE

*A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. The evidence in support of the warrant must be in the form of affidavits, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant and may be provided to the court by any reliable means.*

The warrant for the seizure of the device was requested 8 days after the initial arrest, but the required *affidavits* of facts for supposed violations do not exist in the warrant, nor the subsequent testimony and reports. Only vague assertions that do not constitute “*establishing the grounds*” .

**ARGUMENTS:**

**Harassment and Obstruction Not Applicable.**

Washington State Constitution “SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.”

As the right to press and speech is recognized and responsibility for those actions are also recognized, the charge of harassment requires a threat of bodily harm or restraint under RCW 9A.46.020. It's definitions are as follows.

1           (1) *A person is guilty of harassment if:*

2           (a) *Without lawful authority, the person knowingly threatens:*

3           (i) *To cause bodily injury immediately or in the future to the person threatened or*  
4 *to any other person; or*

5           (ii) *To cause physical damage to the property of a person other than the actor; or*

6           (iii) *To subject the person threatened or any other person to physical confinement*  
7 *or restraint; or*

8           (iv) *Maliciously to do any other act which is intended to substantially harm the*  
9 *person threatened or another with respect to his or her physical or mental health or*  
10 *safety; and*

11           (b) *The person by words or conduct places the person threatened in reasonable*  
12 *fear that the threat will be carried out. "Words or conduct" includes, in addition to any*  
13 *other form of communication or conduct, the sending of an electronic communication.*  
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17 **The charge of obstruction:**

18 RCW 9A.76.020 states:

19           (1) *A person is guilty of obstructing a law enforcement officer if the person willfully*  
20 *hinders, delays, or obstructs any law enforcement officer in the discharge of his or her*  
21 *official powers or duties.*  
22

23  
24 Webster Legal Dictionary also defines Obstruction:

25 *the crime or act of willfully interfering with the process of justice and law especially by*  
26 *influencing, threatening, harming, or impeding a witness, potential witness, juror, or*

1 *judicial or legal officer or by furnishing false information in or otherwise impeding an*  
2 *investigation or legal process.*

3  
4 Yet in the report, we see no blockage to the officer's duty articulated. Only verbal  
5 interaction between both parties. Neither security cameras nor witness testimony indicate  
6 that obstruction occurred under the statute. It is not a violation to express verbal opinions  
7 to an officer, even if the officer does not agree with, or feels those statements should not  
8 be made.  
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11 **In City of Houston v. Hill, 482 U.S. 451 (1987)**

12 Syllabus: *Upon shouting at police in an attempt to divert their attention from his friend*  
13 *during a confrontation, appellee was arrested for "willfully . . . interrupt[ing] a city*  
14 *policeman . . . by verbal challenge during an investigation" in violation of a municipal*  
15 *ordinance making it unlawful for any person "to assault, strike or in any manner oppose,*  
16 *molest, abuse or interrupt any policeman in the execution of his duty." After his acquittal*  
17 *in Municipal Court, appellee brought suit in Federal District Court challenging the*  
18 *ordinance's constitutionality and seeking, inter alia, damages and attorney's fees. The*  
19 *District Court held that the ordinance was not unconstitutionally vague or overbroad on*  
20 *its face, but the Court of Appeals reversed, finding that the ordinance was substantially*  
21 *overbroad, since its literal wording punished and might deter a significant range of*  
22 *protected speech.*  
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1 Held: *A municipal ordinance that makes it unlawful to interrupt a police officer in the*  
2 *performance of his duty is substantially overbroad, and therefore invalid on its face*  
3 *under the First Amendment. The ordinance in question criminalizes a substantial amount*  
4 *of, and is susceptible of regular application to, constitutionally protected speech, and*  
5 *accords the police unconstitutional enforcement discretion, as is demonstrated by*  
6 *evidence indicating that, although the ordinance's plain language is violated scores of*  
7 *times daily, only those individuals chosen by police in their unguided discretion are*  
8 *arrested. Appellant's argument that the ordinance is not substantially overbroad because*  
9 *it does not inhibit the exposition of ideas, but simply bans unprotected "core criminal*  
10 *conduct," is not persuasive. Since the ordinance's language making it unlawful to*  
11 *"assault" or "strike" a police officer is expressly preempted by the State Penal Code, its*  
12 *enforceable portion prohibits verbal interruptions of police, and thereby deals with*  
13 *speech, rather than with core criminal conduct. Moreover, although speech might be*  
14 *prohibited if it consists of "fighting words" that by their very utterance inflict injury or*  
15 *tend to incite an immediate breach of the peace, the ordinance in question is not limited*  
16 *to such expressions, but broadly applies to speech that "in any manner . . . interrupt[s]*  
17 *any policeman," and thereby impermissibly infringes the constitutionally protected*  
18 *freedom of individuals verbally to oppose or challenge police action. Appellant's*  
19 *contention that the ordinance's sweeping nature is both inevitable and essential to*  
20 *maintain public order is also without merit, since the ordinance is not narrowly tailored*  
21 *to prohibit only disorderly conduct or fighting words, but impermissibly provides police*  
22 *with unfettered discretion to arrest individuals for words or conduct that are simply*  
23 *annoying or offensive. Pp. 482 U. S. 458-467.*

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***In Lewis v. City of New Orleans 415 U.S. 130 (1974)***

Syllabus: *On remand from this Court for reconsideration in light of Gooding v. Wilson, 405 U. S. 518, appellant's conviction of violating a New Orleans ordinance making it unlawful "to curse or revile or to use obscene or opprobrious language toward or with reference to" a police officer while in performance of his duties was again sustained by the Louisiana Supreme Court, which did not narrow or refine the words of the ordinance, although stating that it was limited to "fighting words" uttered to specific persons at a specific time.*

Held: *The ordinance, as thus construed, is susceptible of application to protected speech, and therefore is overbroad in violation of the First and Fourteenth Amendments and facially invalid. The ordinance plainly has a broader sweep than the constitutional definition of "fighting words" as being words "which, by their very utterance inflict injury or tend to incite an immediate breach of the peace," Chaplinsky v. New Hampshire, 315 U. S. 568, 315 U. S. 572; Gooding v. Wilson, supra, at 405 U. S. 522, since, at the least, "opprobrious language" embraces words that do not fall under that definition, the word "opprobrious" embracing words "conveying or intended to convey disgrace," id. at 405 U. S. 525. It is immaterial whether the words appellant used might be punishable under a properly limited ordinance. Pp. 415 U. S. 131-134.*



1 **Color of Law and Perjury:**

2 In his police report officer Canady does not detail in what ways he believes Seim violate  
3 statute. Instead he attempts to explain the arrest in part by by using past encounters in  
4 which no arrest was made. In page 8 of the report officer Canady mention a previous  
5 encounter from 12/18/14 “At one time Seim gives me an ultimatum to to stop doing what  
6 I'm doing or else.” The defense holds that Officer Canady is trying to suggest a pattern  
7 of threats by Mr Seim. However, this recording is available online at:  
8 <https://youtu.be/YyV61byHNqI> that includes the interaction between Seim and Candy  
9 that evening. This video was available at the time the report was written. Mr Seim never  
10 says “Stop what you are doing or else!” In fact, during the conversation Mr. Seim  
11 specifically tells officer Canady that he is not threatening him. We contend that if Officer  
12 Canady is willing to falsify a sworn statement that is easily proven false, then he is  
13 willing to lie to the prosecution. Officer Canady's arrest was based maliciousness at worst  
14 and overreaction at best. The arrest of Mr. Seim was not lawful and constitutes a violation  
15 of 18 U.S. Code § 242 - Deprivation of rights under color of law. Further the prosecution  
16 of this case lacks both cause and evidence. The only basis for prosecution appears to be  
17 the dislike local authorities have exhibited for the defendant in previous encounters, we  
18 believe that the actions of the officers and prosecutors together may present a violation of  
19 18 U.S. Code § 241 - Conspiracy against rights and should be investigated further.  
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1 **Admissions:**

2 We are party to no documentation or evidence provided by the State that offers  
3 any reason to pursue this prosecution. The prosecution furthered this belief during the  
4 hearing on 10/13/17 in statements suggesting that he is uncertain how to proceed unless  
5 evidence in the form of video currently unavailable is discovered. Further the prosecution  
6 has sent messages to the defendant attempting to have the defendant give access to media  
7 that he believes to be present on the device, whose confiscation promoted the initial  
8 arrest.  
9

10  
11 The prosecution goes so far as to imply guilt due to the fact that the defendant declined to  
12 help provide access to the device. In an email on 10/17/17 Mr Fedorak states:

13 *“I find it interesting that you claim the contents of the video will be used against you*  
14 *given you actually witnessed what was recorded. Can you please explain what is on the*  
15 *video that you feel will be used against you?”*  
16

17  
18 Mr Fedorak also asked, in an email dated 10/18/17:

19 *“Can you please explain what is on the video that you feel will be used against*  
20 *you?”*  
21

22  
23 In another email dated 10/16 Mr. Fedorak states:

24 *“One of the alternatives we are looking into is a potential motion for an order*  
25 *requiring you to unlock the phone.”*  
26



1 the justice would not be furthered by continuing to trial. Therefore, we respectfully  
2 request a that all charges be dismissed due to insufficient evidence establishing a prima  
3 facie case of the crime charged and that the defendant's property be returned.  
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5  
6 **DECLARATION:**

7 I declared under penalty of perjury under the laws of the State of Washington that  
8 the foregoing is true and correct.  
9

10 \_\_\_\_\_  
11 GAVIN SEIM, Defendant  
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13 **IT SO ORDERED:**

14 Date: \_\_\_\_\_

15 \_\_\_\_\_  
16 Judge/Commissioner of the District Court  
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