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IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: A-09455
	)	
Appellee.	)	
	)	

Trial Court Case #4MC-S04-024 Cr.

PETITION FOR REVIEW

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case, in accordance with *Appellate Rule 402(a)*, and hereby files this Petition for Review of the Aniak District Court's 7/23/07 order, which denied David Haeg's motion for the Suppression of Evidence, denied Jackie Haeg's motion for the Return of Property, and granted David's motion for the Return of Property only in part.

INTRODUCTION

Magistrate Woodmancy of the Aniak District Court has issued a decision that David is not entitled to the return of *all* his property that was deprived and forfeited in violation of constitutional and procedural due process – and was only entitled to the

return of a few petty items. He further ruled that the property could not be suppressed as evidence. Magistrate Woodmancy ruled that to make his case David was not entitled to an evidentiary hearing to confront adverse witnesses, present evidence and testimony, and/or conduct oral argument. In addition Magistrate Woodmancy failed to rule on numerous other requests, including that forfeiture statutes *AS 16.05.190* and *AS 16.05.195* be declared unconstitutional because they lacked standards and allowed the seizure, deprivation, and forfeiture of David and Jackie's property without the procedural due process required by both constitutions – and that this required the return of property and to suppress as evidence all property seized. These decisions by Magistrate Woodmancy are in direct conflict with numerous decisions and principles of the U. S. Supreme Court and numerous decisions and principles of the Alaska Supreme Court. These decisions and principles, which are directly controlling, hold that if notice and opportunity for a hearing is not given promptly after seizure of property, especially property used to provide a livelihood, *all* the property seized must be returned and suppressed as evidence. These decisions and principles also hold that for the opportunity to make the case for return of property to be effective there must be confrontation of adverse witnesses, presentation of evidence and witness testimony, and oral argument. See motion for Return of Property and to Suppress as Evidence and Reply in appendix. An immediate review of this decision would have enormous consequences to others than the parties to the present case and is necessary to further the administration of justice. In addition, not reviewing this decision immediately will result in injustice because an immediate review would

materially advance the ultimate termination of litigation, would result in vindication of David and Jackie's constitutional rights, would save further expenses and hardships to David and his family, would advance an important public interest which might be compromised if the petition is not granted, may otherwise evade review, and is otherwise in the publics interest.

FACTS

During a criminal prosecution of hunting guide David for misdemeanor Fish and Game crimes the State of Alaska, using search warrants based upon perjury (that the evidence of wolves taken same day airborne was in the GMU in which David was licensed to guide and not the GMU in which the Wolf Control program was taking place – for which David had a permit and which *required* same day airborne taking of wolves), seized and deprived David and Jackie Haeg of property used as their primary means to provide a livelihood. No hearing to protest was ever provided, no notice of a hearing or opportunity for a hearing to contest was ever provided, no notice of the case against their property was ever provided, no opportunity to bond the property out was ever provided, and no authority, statute, or intent to seek forfeiture of the property was ever provided in any warrant, charge or information filed. In addition, the statutes which authorized forfeitures in Fish and Game cases, *AS 16.05.190* and *AS 16.05.195*, lacked standards to require this constitutional due process during forfeiture actions.

Much of the property was forfeited after David's conviction.

David and Jackie, after they realized the State's violation of the procedural due process required by constitution, filed motions in the trial court, the district court in which the property was seized, and this Court of Appeals for the return of their property and to suppress it as evidence in accordance with *Criminal Rule 37(c)* and numerous U.S. and Alaska Supreme Court cases. After nearly a year of having all courts refusing to rule on 16 different motions, by saying the other courts had jurisdiction, David finally stated he would just physically go get he and Jackie's property from the Trooper impound yard – in effect having to literally lay his life on the line in order to receive his constitutional protections. It was only after this that this Court of Appeals on 2/5/07 ordered the district court to conduct any proceedings necessary to determine the merits of David's motion.

Magistrate Woodmancy in Aniak then denied David's multiple motions for an evidentiary hearing so he could confront the witnesses against him, to present witness testimony and evidence, and to conduct oral argument – stating David could only provide a written request of "a couple lines why you should get the property", that "this court can't turn back time to change what happened", and " I have no legal training - I can't declare the statutes unconstitutional". See status hearings for Return of Property and to Suppress as Evidence. All ruling caselaw states that for an effective opportunity to determine if property must be returned there must be confrontation of adverse witnesses, witness testimony, evidence presentation, and oral argument. See motion for Return of Property and to Suppress as Evidence. In addition the District Court of Aniak refused David's motions for the Kenai District Court (the district in which the property was

seized) to rule on his motion – stating on the record, "I'm not going to let a sympathetic court rule on this motion" – when *Criminal Rule 37(c)* specifically states motions for the return of property and to suppress as evidence must be made in the court in the district in which the property was seized – in this case Kenai. David filed a petition for review of these decisions to this Court of Appeals – with this court refusing to accept the petition on 3/20/07 – even though Magistrate Woodmancy's decision was in direct conflict with all controlling decisions and principles of both the U.S. and Alaska Supreme Courts. David filed a petition for hearing in the Alaska Supreme Court – with that court refusing to hear it - even though Magistrate Woodmancy's decision was in direct conflict with all controlling decisions and principles of both the U.S. and Alaska Supreme Courts.

As ordered, David filed his written motion in the Aniak District Court on 6/2/07 – supporting his arguments with numerous decisions and principles directly controlling. See Motion for Return of Property and to Suppress as Evidence. The State filed an opposition on 6/22/07. The State opposition was stunning in its lack of substance - without citing a single controlling decision or principle – not supporting their claims with an affidavit as required and requested - and not contesting the fact they never gave David or Jackie constitutionally guaranteed notice of an opportunity to contest, the constitutionally guaranteed notice of the case for forfeiture, or gave the constitutionally guaranteed intent to forfeit. The State claimed, falsely, that David was trying to "impermissibly shift the burden for seeking a post seizure hearing from himself to the State." To make a claim the statutes were not unconstitutional the State affirmatively

misled the court by removing the pertinent facts from their excerpts of the cases David used to support his case. See appendix. David filed a reply on 7/3/07 – pointing out the gross deficiencies, intentional misrepresentations, outright falsehoods, and complete lack of substance in the State's brief. See Reply.

On 7/23/07 the district court rendered a decision, which failed to address nearly every request David made in his motion – granting verbatim what the State wanted. The decision failed to cite any decisions or principles directly controlling; give any authority, justification, or explanation; or to place its essential findings on the record so when David appeals the decision the reviewing court would know the district courts rational for its decision. The decision allowed the return of a few trivial items. No property that was the primary means by which David and Jackie make a living was returned. No property the State claimed was needed to maintain a conviction was returned. The decision appeared as if the court never read David's motion or reply – which cited numerous decisions and principles directly controlling. See appendix. David specifically asked the following from the district court: (1) That the procedural and constitutional due process violations by the State entitled David and Jackie to the return of *all* their property and to suppress it as evidence; (2) That because *AS 16.05.190 and AS 16.05.195* allowed the seizure, deprivation and forfeiture of David and Jackie's property without procedural due process they are unconstitutional and that because of this the seizure, deprivation, and/or forfeiture of *all* David and Jackie Haeg's property, without the constitutionally required notice and/or hearing, was and is void; (3) That because the seizure, deprivation, and/or

forfeiture of David and Jackie Haeg's property was and is void everything seized, deprived, and/or forfeited must be immediately returned and suppressed as evidence; (4) That Trooper Gibbens search warrant affidavits, upon which all search warrants were authorized, contained intentional, misleading, and highly prejudicial perjury – and thus all evidence gathered as a result of these search warrants affidavits must be suppressed; (5) That because of the material issues of fact presented David and Jackie Haeg be allowed an evidentiary hearing in which to confront adverse witnesses, present evidence and witness testimony, and present oral argument. See *Criminal Rule 42(e)(3)*, "If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing." This means that if material issues of fact are presented, *as were,* (search warrant affidavits contained devastating perjury, no prompt post seizure hearing was held, no prompt post seizure notice of a hearing was given, no prompt post seizure notice of the case, statute, or intent to forfeit was given, no opportunity to bond was given, property was used to provide a livelihood, etc, etc) there must be an evidentiary hearing held; (6) That because of the obstructions and delays in getting the motion timely ruled on the court rule on *all* requests – including the one declaring *AS 16.05.190 and AS 16.05.195* unconstitutional. (7) That the court include its essential findings on the record, including caselaw to support it, for the decision on each and every above request – especially the rational to differentiate between items that are returned and those not returned – so an adverse decision could be appealed; (8) How the seizure, deprivation, and/or forfeiture of the property complied with U.S. and Alaska constitutional due

process guarantees; (9) That the court place a very clear and detailed justification for dispensing with any and/or all evidentiary hearings in order to decide the motion which turns on issues of material fact - i.e. whether the search warrant affidavits contained devastating perjury, David and/or Jackie received a hearing or notice of their right to a hearing "within days if not hours" to contest the seizure of the property they used to provide a livelihood or even bond it out, notice of the case to forfeit before the hearing, notice of the statute authorizing this in the charging documents, whether the property was used to provide a livelihood, etc, etc, etc. (10) How not receiving an evidentiary hearing in which adverse witnesses could be cross examined, witness testimony and evidence be presented, and oral arguments did not deprive David and Jackie of their constitutional right to an *effective* opportunity to present their case; (11) That the State affirmatively mislead the court in order to keep property they seized, deprived, and forfeited in violation of constitutional due process and that the State failed to support their factual claims with the affidavit required by rule – ever after requested they do so – apparently to avoid perjury charges when the time comes; and (12) that the State cannot claim David and Jackie waived constitutional rights that cannot be waived without being told of the right waived and unless it was a knowing, intelligent, and voluntary waiver.

On 8/01/07 David filed a motion for reconsideration and clarification and on 8/17/07 the district court denied this motion. The district court again failed to explain or justify its decisions in light of the numerous decisions and principles directly ruling. The district court claims the Appellate Court did not authorize a ruling on the constitutionality

of *AS 16.05.190* and *AS 16.05.195* – even though the Court of Appeals ruled that "any proceedings necessary" be conducted to determine the "merits" of David's motion for return of his property and a determination the statutes were unconstitutional would have meant the immediate return of all David and Jackie's property. The district court stated David's claim that perjury was used in the search warrant affidavits were only "allegations" because they were not admitted into evidence. The district court failed to note that it denied David's numerous attempts to place this perjury in evidence in the constitutionally guaranteed evidentiary hearing that the district court itself repeatedly refused to conduct. In summary the district court again claims only property that was not admitted into evidence or forfeited could be returned – as if violations of constitutional and procedural due process during the seizure and deprivation of property before it is admitted as evidence or forfeited is of no consequence to the district court or constitution.

ARGUMENT

David and Jackie are being purposely denied their constitutional rights by the combined policy of both the State prosecution and the State courts to actively, knowingly and intentionally do so. After numerous meetings with David, Jackie, their business attorney (a former criminal defense attorney), former Alaska State Troopers, and a retired U.S. Airforce pilot, the U.S. Department of Justice agrees this is the case, they can help, and requested all records and future filings in David's case. It is the exact same type of corruption that is being exposed in this State's politicians – the people supposed to

protect and benefit the public have banded together to benefit themselves and defraud the public. As former Alaska House Minority leader Ethan Berkowitz recently said,

> "The state's checks and balances system eroded and the system broke. Power has consolidated into just a few hands and that breeds contempt. That kind of concentration of power gives rise to fascist tendencies."

Look at the contempt with which David and Jackie are being treated. David and Jackie were deprived of their property, used as the primary means to provide a livelihood for their two daughters, with search warrants based on perjury that was meant to take away and put in the State's hands the business David and Jackie had both put their life into. The State never gave David and Jackie the constitutionally mandated prompt notice they had a right to contest the seizure – this meant no one was told about the perjury being used to strip David and Jackie of everything in life (exposure of which would have required the return of the property, suppression as evidence, ending the State's case); the State never gave David and Jackie the constitutional right to promptly ask to bond the property out – this resulted in David and Jackie being financially devastated far before David was charged eight months later or taken to trial years later (exposure of which would have required the return of the property and suppression as evidence, ending the State's case); the State never gave David and Jackie the constitutional right to prompt notice of the statutes authorizing for forfeiture or that the State intended to forfeit their property – this resulted in David and Jackie not knowing they had to defend against forfeiture or what the case was for forfeiture (exposure of which would have resulted in nothing being able to be forfeited); and the statutes authorizing forfeiture, *AS 16.05.190*

and AS 16.05.195, lack standards and allowed David and Jackie to be deprived of their property without procedural due process – this meant the statutes are unconstitutional and the property deprivation was unconstitutional (exposure of which would require all property to be returned, suppressed as evidence, ending of the State's case, with damages awarded). It was only after the forfeiture of David and Jackie's property that David found out procedural and constitutional due process had been plainly violated during the seizure and deprivation of he and Jackie's property. This is when he filed 16 motions over nearly an entire year to get a hearing – all in vain as all the courts told him they did not have jurisdiction – that the other court had jurisdiction. This Court of Appeals even claimed David had never filed a motion with the district court so they couldn't rule. Yet Lori Wade, Chief Deputy Clerk of the Court of Appeals, told David and many others in person that the Court of Appeals had copies of the numerous motions David had filed in the district court at the very time the Court of Appeals claimed they did not have them.

After this is when David said he would just physically go get his property from the Trooper impound yard – including he and Jackie's airplane. In direct effect David had to risk his life in a desperate attempt claim his constitutional right to protest the deprivation of property. This is when this Court of Appeals finally ordered the district court to "hold any proceedings necessary" to decide the "merits" of David's claim.

Yet after David and Jackie finally got this constitutionally guaranteed opportunity to make their case it was immediately rendered ineffective, according to numerous U.S. Supreme Court ruling decisions, because District Court Magistrate Woodmancy denied

David and Jackie their constitutional right to and evidentiary hearing to confront adverse witnesses, present evidence and witness testimony, and to present oral argument. It was clear Magistrate Woodmancy had no intention whatsoever of giving David and Jackie a fair chance for the return of their property, when before he was ever briefed he would not allow an effective opportunity, stated he could not declare the statutes unconstitutional, that there would be no evidentiary hearing so David and Jackie could prove they were unconstitutional, or prove they were entitled to *all* their property back. It is clear it is the district courts policy to help the State prosecution strip defendants of millions of dollars and then put them in jail by intentionally depriving them of fundamentally fair procedures and of their most basic constitutional rights. It is a deliberate and brutally effective policy to deny defendants their most fundamental right to access the courts when they discover and wish to protest these constitutional violations by the government prosecution and courts.

STATEMENT OF PRECISE RELEIF SOUGHT

David and Jackie respectfully ask this Court of Appeals to carefully read David's motion for Return of Property and to Suppress as Evidence, the State's Opposition, and David's Reply, and then accept this petition for review. David and Jackie then respectfully ask this Court of Appeals to grant every request in David's motion and reply. David and Jackie request *all* of their property be returned and suppressed as evidence – as both constitutions and the U.S. and Alaska Supreme Courts clearly require. David and Jackie request David's conviction be reversed with prejudice. David and Jackie request

AS 16.05.190 and *AS 16.05.195* be declared unconstitutional. David and Jackie request this Court order civil proceedings started so they can be reimbursed for these intentional deprivations of their constitutional rights - in both actual and punitive damages.

FINAL OBSERVATION

Again, how can the State prosecution and district court possibly ignore that David and/or Jackie were never given the constitutional and procedural due process of prompt notice and hearing after seizure of their property – especially when this fact was so clearly spelled out in David's brief's – and unopposed by the State's brief? How can the State prosecution claim, and the district court apparently agree, that David waived his right to notice and opportunity for hearing when he didn't ask for notice and opportunity for hearing – when all U.S. and Alaska Supreme Court decisions hold this is the very reason a person deprived of property must be affirmatively given notice and opportunity for hearing - the ignorant person being deprived of property may never know he had a constitutional right to notice of a hearing to protest, the actual hearing itself, or that he was entitled to notice of the case for deprivation or forfeiture of his property – or even there was an intent to do so. He may not even know, as David and Jackie didn't, that he had an opportunity to bond the property out so he could continue to make a livelihood until a trial was held to determine if he should be deprived at all. See Motion and Reply. It is as perverse as claiming a person who didn't ask for his Miranda rights waived his right to be told of his Miranda rights - if he didn't know of his Miranda rights it is obvious he would not know to ask to be told of them.

How can the State prosecution claim, and district court apparently agree, that David waived his constitutional right to notice and hearing when constitutional rights cannot be waived unless the waiver is "knowing, intelligent, and voluntary"? Do the State prosecution and district court believe that when the State failed to give notice and opportunity to David and Jackie of their right to a hearing and case, and David and Jackie then failed to ask for this notice and opportunity, this was a "knowing, intelligent, and voluntary" waiver of notice and opportunity?

How can the State prosecution claim, and district court apparently agree, that David was not entitled to confrontation of adverse witnesses, presentation of evidence and testimony, and/or oral argument when all this has all been held by the U.S. and Alaska Supreme Courts as necessary for an effective opportunity to protest the deprivation and/or forfeiture of property?

How can the State prosecution claim, and district court agree, that the subsequent use of property as evidence or subsequent forfeiture of property cures prior constitutional violations committed during the seizure and deprivation of that same property?

How can the district court claim it cannot decide if *AS 16.05.190* and *AS 16.05.195* are unconstitutional or what the "facts" are when this is needed to decide the "merits"? How can the "merits" be decided if no hearing, confrontation of adverse witnesses, presentation of evidence and testimony, and oral argument is allowed?

This Court of Appeals may not have fully realized the extent of it yet but David and Jackie's case is a massive and fundamental constitutional breakdown that continues

to expand. David, Jackie, and many others will continue carefully documenting this injustice so it never happens again. David and Jackie respectfully ask this Court of Appeals to immediately address these constitutional violations as is their explicit responsibility – and not dodge addressing them as they did in refusing to consider David's petition to order the district court to allow confrontation of adverse witnesses, presentation of evidence and testimony, and/or oral argument – all of which is required by the U.S. Constitution and numerous U.S. Supreme Court decisions as necessary for an effective evidentiary hearing to seek the return of property and to suppress as evidence. If this Court of Appeals fails to accept this responsibility it will again be positive proof that it is this Court's policy to deprive U.S. citizens of their constitutional rights – and thus can be held personally liable, along with anyone else responsible, for damages in a civil action under US Code: Title 42, Section 1983.

The accompanying affidavit, David's Motion for Return of Property and to Suppress as Evidence, State's Opposition, David's Reply, District Court's Decision, Motion for Reconsideration, and District Court's Denial support this motion.

RESPECTFULLY SUBMITTED this _____ day of _____2007.

_____
David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE
I certify that on the ____ day of _____ 2007,
a copy of the forgoing document by ___ mail, ___ fax, or
___ hand-delivered, to the following parties:
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Aniak District Court
U.S. Department of Justice
By: _____