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Faxed to Aniak 8/21/06

IN THE DISTRICT COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA Plaintiff, vs. David HAEG, Defendant.	Case No.: 4MC-S04-024 Cr.

Appellate Court Case #A-09455.

MOTION FOR RECONSIDERATION OF RULING DENYING MOTION FOR RETURN OF PROPERTY AND TO SUPPRESS EVIDENCE

COMES NOW Defendant, DAVID HAEG, in the above referenced case and in accordance with *Alaska Rule of Criminal Procedure 42(k)(1)(A)&(B),* and hereby moves this court to reconsider Magistrate Woodmancy's ruling that he would not consider Haeg's motion for return of property and suppress evidence because Magistrate Woodmancy would not overrule Judge Murphy's previous decision denying this. Haeg would like to point out that this is not a motion to stay the forfeiture, as were all previous motions to Judge Murphy dealing with the return of Haeg's property including his aircraft. The motion given to Magistrate Woodmancy was a motion for return of property and suppress evidence because the property and evidence were seized illegally in violation of two constitutions, established case law, *Alaska Rules of Criminal Procedure Rule No. 37(c).*

It is possible Magistrate Woodmancy thinks this is the same motion as was given to Judge Murphy. They are not - one is to stay forfeiture pending the outcome of a proceeding and the other is a motion for a hearing to determine whether the property and

evidence was seized in violation of statutory law, constitutional law, civil procedure and criminal procedure and thus must be returned permanently. Magistrate Woodmancy's confusion and subsequent deprivation of a hearing to determine these matters is a violation of Haeg's constitutional right of a process in which a court must determine these matters. That Haeg's constitutional right to due process was violated is proven by the fact that the State never gave Haeg notice of a hearing, never gave Haeg a hearing, and more importantly never obtained Haeg's written signature waiving the right to the hearing that was required to happen within 7 days of the seizure of Haeg's property. The only possible way the State could prove that they did not violate Haeg's constitutional rights of due process is if they can produce a statement signed by Haeg waiving his right to a hearing within 7 days of seizing the property. If Magistrate Woodmancy refuses to grant Haeg this hearing Magistrate Woodmancy is in effect knowingly and intelligently denying Haeg to his constitutional rights of due process and equal protection under law as guaranteed by two constitutions along with violating his rights under Alaska Civil and Criminal Procedure. Haeg also requests a hearing be granted to determine whether property was also seized due to Trooper Gibbens perjury and/or recklessly or intentionally misleading a magistrate. A denial of this hearing is also a denial of Haeg's constitutional rights, rules of criminal procedure, and established case law.

If Magistrate Woodmancy maintains his position in these matters it means the State can seize property in any manner they wish - including committing felonies or violating constitutional rights to do so – as long as they obtain a conviction and forfeiture in the end. It is this subsequent conviction and forfeiture which Magistrate Woodmancy claims negates all of the previous crimes and violations of constitutional rights during the proceedings up to the conviction, sentencing, and forfeiture. In other words Magistrate Woodmancy feels that no defendant is entitled to his constitutional rights of due process or to equal

protection under law. Haeg's original motion cites the case law and court rulings which prove Magistrate Woodmancy is in violation of his sworn oath to the uphold the constitution.

Haeg again would like to quote the Supreme Court of Alaska in the *F/V American Eagle v. State* 620 P.2d 657 Alaska, 1980.,

"The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent. As a general rule, forfeitures are disfavored by the law, and thus forfeiture statutes should be strictly construed against the government."

If the prosecution is backed up by Magistrate Woodmancy to deny Haeg his rights to due process does Haeg indeed have those rights? Haeg would like this court to the opinion of Mr. Chief Justice Marshall - who delivered the U.S. Supreme Court opinion in the seminal case of *Marbury v. Madison*, 5 U.S. 137 (1803):

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

Is it to be contended that where the law in precise terms directs the performance of an act in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained.

[W]hen the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

What is there in the exalted station of the officer, which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to the claim; ... directing the performance of a duty, ... on particular acts of congress and the general principles of law?

If one of the heads of departments commits any illegal act, under colour of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How then can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?

[W]here he is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not ... forbidden; ... it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment, that right to be done to an injured individual...

It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it...

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation...

This theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions-a written constitution, would of itself be sufficient, in America where written constitutions have been viewed with so much reverence, for rejecting the construction.

The judicial power of the United States is extended to all cases arising under the constitution. Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises? This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

'No person,' says the constitution, 'shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.'

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: 'I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.'

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime."

The above seminal case, which is cited by all courts to this day, firmly establishes that the constitution of the United States is the highest written law in the land. This case also establishes that upholding and obeying the constitution is the greatest judicial duty an officer of the court has. If this is true of the Untied States constitution it must also be true of the constitution of the State of Alaska. In other words, an officer of the court who ignores or deliberately breaks the constitution is violating their explicit mandate – and may be held responsible by those thus harmed.

RESPECTFULLY SUBMITTED this _____ day of _____, 2006.

Defendant,

_____

David S. Haeg

I HEREBY CERTIFY that a copy of the foregoing (including signatures & dates) was served on Roger Rom, OSPA, by fax on _____, 2006

By: _____