No. 87376-3

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ALLEN CLARK,

Petitioner.

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

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INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Washington ("ACLU") is a statewide, nonpartisan, nonprofit organization of over 20,000 members, dedicated to the preservation of civil liberties, including privacy. The ACLU strongly supports adherence to the provisions of Article 1, Section 7 of the Washington State Constitution, prohibiting invasion of a person's home without authority of law and strictly enforcing the exclusionary rule. It also supports the rights of tribal self-determination and self-governance. It has participated in numerous privacy-related cases as *amicus curiae*, as counsel to parties, and as a party itself.

ISSUE TO BE ADDRESSED BY AMICUS

Whether a county district court search warrant, obtained and executed by city police without any attempt to involve the tribal police, tribal court or federal authorities, lacked authority of law, since it authorized the search of a tribal member's home situated on tribal trust land held for the benefit of the Colville Confederated Tribes.

STATEMENT OF THE CASE

The following facts are based on the record described in the parties' briefs. Petitioner/defendant Michael Clark is an enrolled member of the Colville Confederated Tribes ("Colville Tribes"), and he resides on

tribal trust land situated within the Colville Indian Reservation. The State accused him of committing crimes on fee land within the Reservation. A detective from the Omak city police department obtained a search warrant for Clark's home from an Okanogan County District Court judge. The city detective made no effort to obtain a search warrant from a judge from the Colville Tribal Court. The detective also did not seek any assistance from the Colville Tribal Police or federal authorities. The Omak detective served the search warrant on Clark's home and the prosecution sought to use items found in the search as evidence at Clark's trial.

Clark filed a motion to suppress the evidence, arguing that the Omak city police should have obtained a warrant from the Colville Tribal Court to search his home on the reservation. After a suppression hearing, the Okanogan County Superior Court denied the motion to suppress. The Court of Appeals affirmed the denial of suppression, and this Court granted review.

ARGUMENT

A. A Search Warrant Issued without Valid Authority Violates the State Constitution, and Evidence Obtained in Conjunction with that Warrant must be Suppressed.

Article 1, section 7 of the Washington State Constitution states: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The express language of the Constitution

makes clear that its protections apply with particular force to police invasions of a person's home, without authority of law.

Consistent with our Constitution's strong protections, this Court's precedent has carefully examined whether the "authority of law" requirement is satisfied in particular cases. "In general terms, the authority of law required by article I, section 7 is satisfied by a valid warrant." *State v. Miles*, 160 Wn.2d 236, 247, 156 P.3d 864 (2007) (emphasis added). In *Miles*, the Court ruled authority of law was lacking when the process used to obtain bank records was a subpoena authorized by statute rather than a judicially approved subpoena or search warrant. Additionally, in *City of Seattle v. McCready*, 123 Wn.2d 260, 277, 868 P.2d 134 (1994), this Court recognized the importance of "carefully circumscribing" the power to obtain a search warrant for a person's home, since when the State abuses that power there is a "grievous" disruption of the liberty of individuals. *McCready* ruled that the state constitution was violated when searches of homes were conducted pursuant to warrants issued by a body lacking the authority to issue them.

Here, for the reasons explained in the rest of this brief and in the briefs of Clark and *amici* Colville and Tulalip Tribes, the search warrant was not legally valid. The process used did not comply with the law and the constitutional requirement of "authority of law" was absent.

Furthermore, since the search warrant was invalid, the remedy is suppression. This Court has consistently rejected any exception to a strong exclusionary rule. *State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982), *State v. Boland*, 115 Wn.2d 571, 582, 800 P.2d 1112 (1990); *State v. Winterstein*, 167 Wn.2d 620, 220 P.3d 1226 (2009); *State v. Afana*, 169 Wn.2d 169, 233 P.3d 879 (2010). These cases all firmly reject the claim of *amicus* WAPA that "barriers" to state court search warrants are contrary to the public interest. Instead, the public interest is served by enforcement of our state constitution. All three purposes of the exclusionary rule under Article 1, section 7, are served by suppression here: "[F]irst, and most important, to protect privacy interests of individuals against unreasonable governmental intrusions; second, to deter the police from acting unlawfully in obtaining evidence; and third, to preserve the dignity of the judiciary by refusing to consider evidence which has been obtained through illegal means." *State v. Bonds*, 98 Wn.2d 1, 12, 653 P.2d 1024 (1982). For the following reasons, this Court should find that the search warrant here was without "authority of law" and the lower courts' ruling should be reversed.

B. The Omak Police Department Failed to Follow Applicable Rules for Obtaining a Search Warrant for a Tribal Member's Home on Tribal Trust Land.

3. An established procedure for executing search warrants on tribal trust land already exists.

Generally speaking, state officers lack jurisdiction to assert criminal process over Indians on tribal trust lands, except where expressly authorized by Congress. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 171, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973); *Indian Community of Fort Belknap Indian Reservation v. Mazurek*, 43 F.3d 428, 432 (9th Cir. 1994).

In *Williams v. Lee*, the United States Supreme Court held that a state's attempt to import state authority and process on reservation trust lands must be determined in light of whether such exercise would "infringe on the right of reservation Indians to make their own laws and be ruled by them." 358 U.S. 217, 220, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959). In applying this test, numerous courts have held that although a state may have jurisdiction over an Indian defendant relative to a crime committed in that state's jurisdiction, *see Kake v. Egan*, 369 U.S. 60, 75, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), when that defendant is situated on Indian trust land a "state officer's . . . authority necessarily is limited by tribal sovereignty" – meaning the officer's authority extends only "so long as the investigation

does not infringe on tribal sovereignty by circumventing or contravening a governing tribal procedure." *State v. Harrison*, 148 N.M. 500, 238 P.3d 869, 876, 880 (N.M. 2010) (citing *Williams*, 358 U.S. at 220); *United States v. Peltier*, 344 F. Supp. 2d 539, 547-48 (E.D. Mich. 2004) (state judge not authorized to issue the warrant to search the property within the reservation: *see also generally South Dakota v. Cummings*, 679 N.W.2d 484 (S.D. 2004) (same).

Thus, the central inquiry is whether the tribe had a procedure in place that was disregarded or violated by state authorities. If the tribal government does have a codified criminal procedure in place, as do the Colville Tribes and many other tribes in Washington, the State will have violated tribal sovereignty in circumventing or contravening that governing tribal procedure.[1] *Harrison*, 238 P.3d at 880.

[1] These governing tribal procedures are readily available and often mirror their state and federal counterparts. *See e.g.* TULALIP TRIBAL CODE § 5.3.2 (authorizing a search warrant to be issued "upon a written or oral sworn statement of a law enforcement officer or tribal prosecutor"); LUMMI TRIBAL CODE § 2.02.050(c) (tribal court may issue warrant on the basis of "affidavit(s) or sworn testimony"); MAKAH TRIBAL CODE § 1.4.05 ("All judges and personnel of the Tribal Court shall be authorized to cooperate with . . . with all federal, state, county and municipal agencies . . . ."); SKOKOMISH TRIBAL CODE § 3.01.077(b) (authorizes issuance of search warrant on the basis of "a written, sworn statement which shows that there is probable cause to believe a search will discover stolen or contraband property, property which has been used or is being used to commit a crime, or evidence that a crime has been committed"); SWINOMISH TRIBAL CODE § 3-03.120 (allows issuance of arrest warrant on the basis of "written complaint or affidavit, under oath, before a tribal judge or judicial officer"); SQUAXIN ISLAND TRIBAL CODE §4.28.090 (search warrant based on "sworn statement which shows that there is probable cause to believe a search will discover stolen or contraband property, property which has been used or is being used to commit a crime, or evidence that a crime has been committed"); SAUK-SUIATTLE TRIBAL CODE § 4.160 (search warrant issued if "supported

The State of Washington's own post-*Hicks* administrative guidelines recognize this principle, advising local governments to comply with codified tribal process when removing Indians from Indian trust land. Pamela B. Loginsky, "Working With Tribal Prosecutors - District Court Training 8 (2008) ("[Tribal] extradition procedures [must] be complied with, except in cases of hot pursuit, when an Indian [is] located within the geographic boundaries of a reservation upon property that is not subject to State jurisdiction."); Washington Association of Prosecuting Attorneys, "Basic Rules of Jurisdiction in Indian Country - Confessions, Searcy, Seizure, and Arrest: A Guide for Police Officers and Prosecutors 301 (2011) ("If the subject of the warrant is an Indian who is currently in tribal custody, the State may have to follow the extradition procedure established by the Tribe to obtain custody of the individual."). Only if the tribal government does not have a criminal procedure in place, unlike here, may the state exercise its criminal process as it would on state lands.

The reasoning behind this rule was explained in *Saginaw Chippewa Indian Tribe of Michigan v. Granholm*, No. 05-10296, 2010 WL 5185114 (E.D. Mich. Dec. 17, 2010), *aff'd*, 2011 WL 1884196, at (May 18, 2011):

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by a written and sworn statement based on reliable information."); SNOQUALMIE TRIBAL CODE § 5.1 ("The judgments, orders, warrants, decrees, subpoenas, records of a foreign court, and other judicial actions are presumed to be valid and will have the same effect as Tribal Court orders, judgments, decrees, warrants, subpoenas, records and actions . . . .").

> Congress intended for autonomous, self-governing Indian Tribes to have [sovereign] rights and powers. If Congress is displeased with the arbitrary way [that a] Tribe has exercised its sovereignty . . . Congress should take steps to abrogate it. . . . [This rule] is consistent with *Hicks* and the interests of the public [as it does] not limit the authority of the state police to enforce state law within [reservation trust lands]. Rather, it simply requires that the state police officers follow certain procedures before entering [those lands]. The state police will still be able to execute state-issued search warrants within the [those lands] after obtaining [tribal] authorization.

Id. at *11, *3. This led the Court in *Saginaw Chippewa* to conclude that "in the absence of a cooperative agreement between the State and the Tribe, tribal members are subject to process, issued and served by state agents," provided that process complies with tribal procedure. *Id.* at *11.

Every state court to address the issue has held likewise, as the brief of *amicus* Colville Tribes makes clear. *See e.g. Harrison*, 238 P.3d 869; *Cummings*, 679 N.W.2d 484. Secondary authority on the rule leads to the same conclusion. *See e.g.* D. Craig Lewis, *Jurisdiction: Crimes on Indian Reservations*, *in* IDAHO TRIAL HANDBOOK § 4:2 (2012) ("The state has jurisdiction to issue a warrant for a search within Indian country where the state has jurisdiction over the underlying crime, and where tribal law does not provide a procedure for executing such a warrant.") (emphasis added); Robert N. Clinton, *Tribal Courts and the Federal Union*, 26 WILLAMETTE L. REV. 841, 924 (1990) (noting that states "must comply with the

provisions of the [tribal] extradition procedure" when extraditing criminals). As the search warrant here was unlawful for want of adherence to codified Colville Tribal process, this Court should reverse the lower courts.

4. This Established Rule was Not Overruled by the Supreme Court's Ruling in *Nevada v. Hicks*.

The rule announced in the above cases was not overruled by the United States Supreme Court's ruling in *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001). Even if the Court of Appeals' characterization of *Hicks* as holding "that state officers could enter the reservation and serve a search warrant for a crime committed within the state's jurisdiction" was correct – and it is not – *Hicks* did not hold that state officers may do so while ignoring codified tribal procedure.

First, *Hicks* did not hold that city police may obtain a search warrant from a state court for a tribal member's home on tribal trust land without even attempting to utilize tribal procedures. The state officer in *Hicks* <u>*did*</u> obtain a search warrant from the tribal court and <u>*did*</u> execute that warrant under the applicable rules of the tribe. *See id.*, 533 U.S. at 356 ("A search warrant was obtained from the tribal court, and the warden, accompanied by a tribal police officer, searched respondent's yard."; "[A]

tribal-court warrant was . . . secured, and respondent's home was . . . searched by three wardens and additional tribal officers.").

Here, the Court of Appeals recognized "[t]he detective did not seek a search warrant from tribal court, nor did he seek assistance from the tribal police before serving the warrant." The Colville Tribes did and do have in place tribal code procedures regarding search warrants; but those procedures were blatantly ignored by the State. The facts here are significantly different than those in *Hicks*, and the *Hicks* Court in no way addressed the ability of state officers to ignore tribal procedures. *See also Hicks*, 533 U.S. at 358 n.2 ("Our holding in this case is limited to the question of tribal-court jurisdiction over state officers enforcing state law."); *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 813 (9th Cir. 2011) ("*Hicks* is best understood as the narrow decision it explicitly claims to be.").

Furthermore, the Ninth Circuit Court of Appeals has already explicitly held that the "limited nature of *Hicks*\'s holding" renders that language "inapplicable" to cases where, as here, established precedent otherwise controls. *McDonald v. Means*, 309 F.3d 530, 540 (9th Cir. 2002). And as noted in *Cummings*, *Hicks* involved tribal adjudicatory authority over state officials, not complete state disregard of codified tribal

regulatory procedures for a search warrant authorizing intrusion into a tribal member's home on tribal trust land:

> The key distinction is that in *Hicks*, the Tribe was attempting to extend its jurisdiction over state officials by subjecting them to claims in tribal court. Here, the State is attempting to extend its jurisdiction into the boundaries of the Tribe's Reservation without consent of the Tribe or a tribal-state compact allowing such jurisdiction. In other words, in *Hicks*, tribal sovereignty was being used as a sword against state officers. Here, tribal sovereignty is being used as a shield to protect the Tribe's sovereignty from incursions by the State. It is difficult to maintain the proposition that the State, after having failed to effectively assert jurisdiction when given the opportunity by Congress [in PL 280], now suddenly gains that jurisdiction through no action of the State or the Tribe.

Cummings, 679 N.W.2d at 487-89. The Court of Appeals erroneously overlooked the role of tribal sovereignty as a shield protecting both the Colville Tribal self-governing authority and Clark's privacy in this case. This Court should reverse that error.

5. Public Law 280 did Not Alter the Established Rule.

As noted above, an exception to the general rule that state officers lack jurisdiction to assert criminal process over Indians on tribal trust lands exists only where such a departure is expressly authorized by Congress. As explained by the Court in *United States v. Daye*, 696 F.2d 1305 (11th Cir. 1983):

> Congress has plenary and exclusive power over Indian affairs and the states may exercise their jurisdiction only if

> Congress has expressly provided that State law shall apply. In 1953 Congress did allow states which so chose to assume civil and criminal jurisdiction over Indians within their borders. Public Law 280, Act of August 15, 1953, 67 Stat. 590. . . . The Federal statute provides that a state may acquire jurisdiction over Indian affairs to the extent that it has jurisdiction over offenses committed elsewhere in the state. But, because [Indian trust land] remains in the exclusive jurisdiction of the federal government, [the state] has not and cannot extend its jurisdiction to cover Indian lands . . . .

Id. at 1307; *see also* RCW 37.12.010 (state jurisdiction does "not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation . . . ."). In other words, Washington State's enactment of P.L. 280 did not extend full state concurrent criminal jurisdiction to the tribal trust land on which Clark's home was located. *Young v. Duenas*, 164 Wn.App. 343, 262 P.3d 527, 532 (2011); *see also State v. Ambro*, 142 Idaho 77, 123 P.3d 710, 716 (Idaho Ct. App. 2005). P.L. 280 did not alter the general rule that state process that infringes on tribal sovereignty "by circumventing or contravening a governing tribal procedure," as here, cannot be sustained. *Harrison*, 238 P.3d at 880. The Court should reverse.

C. A Lack of Cooperation between State Law Enforcement and Tribal Authorities Undermines the Safety of Tribal Members and the State-Tribal Government-to-Government Relationship.

1. A lack of cooperation between state law enforcement and tribal authorities undermines the safety of tribal members.

It is ironic that the State and *amicus* Washington Association of Prosecuting Attorneys ("WAPA") are fighting inter-local coordination in the execution of search warrants on tribal trust lands. Numerous studies have found that any threat to public safety in Indian Country results from the very lack of coordination that the State seeks to avoid. As noted by the U.S. Congress in its findings to the Tribal Law and Order Act of 2010:

> [T]he complicated jurisdictional scheme that exists in Indian country . . . has a significant negative impact on the ability to provide public safety to Indian communities; . . . and . . . requires a high degree of **commitment and cooperation** among tribal, Federal, and State law enforcement officials . . .

Pub. L. No. 111-211, § 202, 124 Stat. 2262 (2010) (emphasis added); *see also* DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF THE INTERIOR, TRIBAL LAW AND ORDER ACT: LONG TERM PLAN TO BUILD AND ENHANCE TRIBAL JUSTICE SYSTEMS 32 (2011) ("Broad-based partnerships involving . . . tribal, state and local partners can build stronger, more sustainable programs. These collaborations can address challenges related to jurisdiction over tribal members . . . .").

Indeed, in light of these findings, Washington State has enacted a statute that requires state agencies to "establish[] a government-to-government relationship with Indian tribes," to "[m]ake reasonable efforts to collaborate with Indian tribes," and to "[e]ffective[ly] communicat[e] and collaborat[e with] Indian tribes." RCW 43.376.020.010-040. Similarly, Washington Supreme Court-promulgated Superior Court rules provide for full recognition of tribal court orders. CR 82.5. Neither the spirit nor the letter of these laws was followed here. The State's decision to ignore any attempt at tribal coordination or collaboration as to the search warrant here needlessly and recklessly put both tribal members and state officers at risk. *See e.g.* Complaint, *Capps v. Olson*, No. 12-5025 (D.S.D. Apr. 19, 2012), ECF No. 1 (unarmed tribal member shot and killed by state officers unfamiliar with Indian Country). The Court should not sanction the State's neglect here.

6. A lack of cooperation between state law enforcement and tribal authorities undermines the state-tribal government-to-government relationship, which is vital to the political independence of tribal governments.

In *United States v. Kagama* the U.S. Supreme Court noted that states are often the "deadliest enemies" of the tribes. 118 U.S. 375, 384, 6 S.Ct. 1109, 30 L.Ed. 228 (1886). This assumption of mutual animosity formed the backdrop, if not the backbone, of tribal/state relations. *See*

White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980) (noting that the classic model of Indian law is "so deeply engrained in our jurisprudence that [it] ha[s] provided an important 'backdrop'"). Even into the first decades of the "self-determination" era, tribes and states often competed in vicious zero-sum battles over criminal jurisdiction and regulation. *See* Robert T. Anderson, *Negotiating Jurisdiction: Retroceding State Authority Over Indian Country Granted by Public Law 280*, 87 WASH. L. REV. 915, 922 (noting that Washington State's assertion of criminal jurisdiction over Indian lands is based on "local racism and jurisdictional jealousy"); Puyallup Tribe of Indians, Fishing: History, http://www.puyallup-tribe.com/history/fishing/ (last visited Dec. 20, 2012) (describing Washington state and local law enforcement use of arrests to deprive tribal members' treaty fishing rights through the 1970's in Washington State, which preceded the current approach of greater tribal-state cooperation in fisheries matters).

Today, it has become readily apparent that the states' unsolicited assertion of criminal jurisdiction and process in Indian Country has actually made the problem of Indian Country crime *much* worse. Anderson, *supra*, at 923; DUANE CHAMPAGNE & CAROLE GOLDBERG, CAPTURED JUSTICE: NATIVE NATIONS AND PUBLIC LAW 280, at 200

(2012); U.S. DEP'T OF JUSTICE, PUBLIC LAW 280 AND LAW ENFORCEMENT IN INDIAN COUNTRY – RESEARCH PRIORITIES (2005); U.S. DEP'T OF JUSTICE, PUBLIC LAW 280: ISSUES & CONCERNS FOR VICTIMS OF CRIME IN INDIAN COUNTRY (2004). As a result, violent crime rates in Indian Country are more than 2.5 times the national rate. STEVEN W. PERRY, AMERICAN INDIANS AND CRIME 1992-2002 (2004) (report of the U.S. Department of Justice, Bureau of Justice Statistics); *see also generally* Ryan Dreveskracht, *Congress' Treatment of the Violence Against Women Act: Adding Insult to Native Womens' Injury*, 4 U. MIAMI RACE & SOC. JUST. L. REV. ___ (forthcoming 2013).

On the other hand, when tribal governments and states work together in a way that respects each others' sovereignty, a new and more dynamic tribal/state relationship emerges; one that protects the safety of tribal members rather than substantiates the unsupported claims made by the State or *amicus* WAPA that tribal search warrant protocols will somehow turn reservations into "asylums for fugitives from justice," where state court subpoenas, jury summonses or protection orders are routinely ignored. As noted by Professor Fletcher,

> States and tribes are beginning to smooth over the rough edges of federal Indian law – jurisdictional confusion, historical animosity between states and Indian tribes, competition between sovereigns for tax revenue, economic development opportunities, and regulatory authority –

> through cooperative agreements. In effect, a new political relationship is springing up all over the nation between states, local units of government, and Indian tribes.

Matthew L.M. Fletcher, *Retiring the "Deadliest Enemies" Model of Tribal-State Relations*, 43 TULSA L. REV. 73, 74 (2007).

At the moment, a growing majority of tribes and states understand that recognition and compliance with tribal procedure results, practically, in negotiations and agreements between the two sovereigns. *See e.g.* MEMORANDUM OF UNDERSTANDING BETWEEN THE COWLITZ INDIAN TRIBE AND CLARK COUNTY (2004); INTER-GOVERNMENTAL AGREEMENT BY AND BETWEEN THE ARIZONA DEPARTMENT OF PUBLIC SAFETY AND THE SAN CARLOS APACHE TRIBE (2005) ("[State] agrees to respect the Tribe's extradition procedures in seeking the extradition of Indian offenders from the San Carlos Apache Reservation in the execution of off-reservation warrants.").

As a result of honoring tribal law and procedure, tribes are allowed the "proactive assertion of their right to self government" that is absolutely necessary for economic and political independence. Marren Sanders, *Ecosystem Co-Management Agreements: A Study of Nation Building or a Lesson or Erosion of Tribal Sovereignty?*, 15 BUFF. ENVTL. L.J. 97, 100 (2008). By reorganizing their relationships with state governments, tribal governments also reduce their dependency on the federal government,

which in turns strengthens tribal self-determination and self-governance. Stephen Cornell & Joseph Kalt, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*, 22 AM. INDIAN CULTURE & RES. J. 193 (1998). Again, as noted by Professor Fletcher, "[e]ach time a state or local government agrees to negotiate with an Indian tribe and then to execute a binding agreement with an Indian tribe, that non-Indian government is recognizing the legitimacy of the tribal government. Intergovernmental negotiation and agreement is an expression of 'active sovereignty' – and a means of earning governmental legitimacy." Fletcher, *supra* at 87. What is more, to the extent tribal-state negotiation reflects a nonadversarial model of justice that encourages parties to locally develop their own solutions to problems, the negotiation of inter-governmental agreements is consistent with many tribal systems of justice – another key to sustainable tribal governance and development. Stephen Cornell & Joseph P. Kalt, *Two Approaches to the Development of Native Nations: One Works, the Other Doesn't*, *in* REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT 25 (Miriam Jorgensen, ed., 2007). Reversal here will only serve to motivate that "commitment and cooperation among tribal, Federal, and State law enforcement officials," which the Congress has declared is required to

improve public safety for everyone in Washington Indian Country. Pub. L. No. 111-211, § 202, 124 Stat. 2262.

CONCLUSION

Pursuant to the authorities cited above, Omak city police should have at least attempted to honor codified Colville Tribal processes for obtaining the search warrant for Clark's home on tribal trust land. The search violated the state constitution because they failed to do so, and reversal should be ordered. Reversal is consistent not only with the state constitution's requirement that searches of homes comply with authority of law; but also with longstanding common law rules regarding criminal jurisdiction and search warrants in Indian Country (even post-*Hicks*); with current federal Indian Country law enforcement policy; with due respect for tribal sovereignty in this era of Indian self-determination and tribal-

state cooperation; and with improved public safety in Indian Country.

Respectfully submitted this 21st day of December 2012.

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