

No. 69892-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY CRAIG LEE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

After Mr. Lee expressed dissatisfaction with the outcome of his motions to suppress, the court intervened in plea negotiations and exerted pressure on the State to present a plea offer to Mr. Lee and improperly urged Mr. Lee to accept the offer by informing him that things frequently go badly for defendants at trial. Despite Mr. Lee's unwavering focus on the suppression hearing, the court did not inform Mr. Lee that he was waiving his right to appeal the court's decision on these motions by pleading guilty. The court's extraordinary involvement in encouraging Mr. Lee to plead guilty, and failure to fully inform him of the constitutional rights he was waiving, undermines the voluntariness of Mr. Lee's guilty plea.

B. ASSIGNMENTS OF ERROR

1. The trial court erred by accepting Anthony Lee's guilty plea to the crime of criminal solicitation.

2. Mr. Lee's guilty plea to criminal solicitation was not knowing, intelligent, and voluntary and was thus entered in violation of his constitutional right to due process.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. In order to comply with due process, a defendant's guilty plea must be knowing, intelligent, and voluntary. A trial court undermines the voluntariness of a guilty plea by advising a defendant, directly or implicitly, about the wisdom of pleading guilty. In the case at bar, the trial court exerted pressure on the State to extend a plea offer to Mr. Lee and warned Mr. Lee that things frequently go badly for defendants who elect to go to trial. Did the court's extraordinary intervention in plea discussions undermine the voluntariness of Mr. Lee's guilty plea?

2. A plea is not constitutional if the defendant does not understand the consequences of the plea, including that he necessarily waives important constitutional rights. Where Mr. Lee pled guilty but was not informed, and did not understand, that by pleading he was waiving his right to appeal the trial court's decision denying his motions to suppress, was his guilty plea knowing, intelligent, and voluntary?

D. STATEMENT OF THE CASE

Anthony Craig Lee was charged with possession with intent to deliver cocaine. CP 6. Mr. Lee moved to suppress evidence of the

cocaine found on his person and his statements to law enforcement. 10/15/12 RP 10. At the CrR 3.5 and CrR 3.6 hearing, the trial court denied Mr. Lee's motions. 10/16/12 RP 172.

After his motions to suppress were denied, Mr. Lee addressed the court regarding his perceived unfairness of the proceeding. 10/16/12 RP 200. In response to Mr. Lee's concerns, the trial court questioned the State about whether there was a plea offer available to Mr. Lee. 10/16/12 RP 202. When the trial court learned that a prior offer to plead to a lesser charge was no longer available, it instructed the prosecuting attorney to return to her superiors, relay a message from the court, and determine whether the State could present a new offer to Mr. Lee. 10/16/12 RP 202.

After a recess, the State returned with an offer that allowed Mr. Lee to plead to criminal solicitation instead of possession with intent, which lowered Mr. Lee's possible sentence to 45-60 months. 10/16/12 RP 215. The judge explained the State's offer to Mr. Lee, comparing the possible sentences and emphasizing the worst case scenario should Mr. Lee lose at trial. 10/16/12 RP 217-18. The judge also discussed the likely "good time" Mr. Lee would receive while in prison and

explained the possibility of a drug offender sentencing alternative (DOSA). 10/16/12 RP 216-217.

Mr. Lee indicated he understood the difference between the possible sentences, but continued to express confusion about the outcome of his motions to suppress. 10/16/12 RP 218. The trial court explained its reasoning for denying the motions to suppress, and after Mr. Lee remained unconvinced, the trial court instructed Mr. Lee that things frequently “go badly” for defendants who elect to go to trial. 10/16/12 RP 225.

Mr. Lee ultimately accepted the State’s plea offer, but was not informed by the court or in the written statement of the guilty plea that, by doing so, he was waiving his right to appeal the trial court’s decision on his motions to suppress. 10/16/12 RP 239; CP 22-34. Mr. Lee later moved to withdraw his plea. 1/17/13 RP 10. The trial court denied this motion. 1/17/13 RP 26. This appeal follows.

E. ARGUMENT

MR. LEE'S GUILTY PLEA TO CRIMINAL
SOLICITATION WAS NOT KNOWING,
INTELLIGENT, AND VOLUNTARY IN VIOLATION
OF HIS CONSTITUTIONAL RIGHT TO DUE
PROCESS OF LAW

A criminal defendant waives important constitutional rights when he enters a plea of guilty, and due process requires the plea be knowingly, intelligently and voluntarily entered. U.S. Const. amends. 5, 14; Wash. Const. art. 1 §§ 3, 22; Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1079, 23 L.Ed.2d 274 (1969); Personal Restraint of Isadore, 151 Wn.2d 294, 297-98, 88 P.3d 390 (2004). The State bears the burden of demonstrating a guilty plea is knowing, intelligent and voluntary. State v. Ross, 129 Wn.2d 279, 287, 916 P.2d 405 (1996).

CrR 4.2 also governs guilty pleas, and sets forth procedural safeguards designed to ensure that a defendant's constitutional rights are protected. State v. Taylor, 83 Wn.2d 594, 596-97, 521 P.2d 699 (1974). The rule requires the trial court to permit a defendant to withdraw his guilty plea to correct a "manifest injustice." CrR 4.2(f).

The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.

Id. (Emphasis added). The defendant must prove withdrawal of the plea is necessary to correct the manifest injustice. Ross, 129 Wn.2d at 283-84.

1. By improperly urging Mr. Lee to plead guilty, the court undermined the voluntariness of Mr. Lee's guilty plea.

a. A guilty plea must be voluntarily entered.

A criminal defendant's waiver of his right to trial by jury and agreement to enter a guilty plea must be an intentional relinquishment of a known right, indulging in every presumption against waiver. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). When a trial court coerces or pressures a person to plead guilty, the plea is rendered involuntary. State v. Wakefield, 130 Wn.2d 464, 473, 925 P.2d 183 (1996).

Standards set by the American Bar Association caution judges not to participate in plea negotiations and strictly denounce urging a defendant to plead guilty. American Bar Association, ABA Standards for Criminal Justice: Pleas of Guilty, 3rd Ed. (1999);¹ Wakefield, 130 Wn.2d at 473 (1996) (agreeing with limits on judicial intervention as set forth in ABA Standards); State v. Pouncey, 29 Wn.App. 629, 635-

¹ Available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_toc.html (last accessed October 16, 2013).

37, 630 P.2d 932, rev. denied, 96 Wn.2d 1009 (1981). The ABA rules formerly permitted a judge to sua sponte “inquire of the parties whether disposition without trial has been explored and may allow an adjournment to enable plea discussions to occur.” ABA Standards, 2d. ed. (1980), section 14-3.3(e). However, the current ABA rules direct that a judge “should not ordinarily participate in plea negotiation discussions among the parties.” ABA Standards, 14-3.3(d). Moreover, both the current and former ABA standards agree:

The judge should never through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered.

14-3.3(c); see also Former ABA Standards, 2d. ed. (1980), section 14-3.3(f).

A trial court’s participation in plea negotiations may render a guilty plea involuntary. Wakefield, 130 Wn.2d at 473. In Wakefield, the court told the defendant it was concerned she was not accepting a plea offer that would “subject her to much less jeopardy.” Id. The court further “urge[d]” the defendant to take her attorney’s advice and accept the guilty plea, while reminding the defendant it could not “force” her to accept the attorney’s advice. Id. Wakefield pleaded guilty shortly after hearing the court’s remarks, indicating several times that her plea

was voluntary, but at sentencing the court imposed a higher sentence than it indicated it would during the plea discussions. Id. at 469-70.

On appeal, the court rejected the voluntariness of the guilty plea based on the court's role in urging Wakefield to plead guilty. Id. at 475. The court reversed the conviction and remanded the case for Wakefield to have the opportunity to withdraw her plea if she so desired. Id.

Similarly, in State v. Watson, the Supreme Court accepted review of a "routine" Court of Appeals opinion with which it agreed in order to emphasize that "[t]rial judges are to refrain from offering defendants any advice, direct or implied, about the wisdom of pleading guilty." 159 Wn.2d 162, 165, 149 P.3d 360 (2006) (emphasis added). In Watson, the trial court told the defendant it believed the defendant should accept the State's offer. Id. at 164. Although the court found that the plea was voluntary because it was entered over a month after the trial court's remarks, and therefore sufficiently distanced from the improper statements, the court stressed that these statements were "wholly inappropriate." Id. at 165.

b. The trial court pressured Mr. Lee to plead guilty.

Before beginning Mr. Lee's trial, the trial court held a CrR 3.5 and CrR 3.6 hearing in which Mr. Lee moved to suppress evidence of the cocaine found on his person and the statements he made to law enforcement. 10/15/12 RP 10. The trial court denied these motions. 10/16/12 RP 172.

After the hearing, and immediately before beginning jury selection for trial, the court engaged with Mr. Lee in a lengthy discussion about Mr. Lee's perceived unfairness of the proceedings and incompetence of his defense counsel. 10/16/12 RP 195-201. During this discussion, Mr. Lee referenced a plea offer presented by the State that had since expired. 10/16/12 RP 201. This offer amended Mr. Lee's charge of possession with intent down to simple possession, with an agreed sentence recommendation of 12 months and one day. 10/16/12 RP 201.

When the State explained this offer was no longer available because the State had paid to fly in an officer from out of town to testify, the court responded "[m]aybe you should go down and you can report to your superiors the judge says so what. If it was a fair offer a week ago before you lew [sic] him from out of State, it's a fair offer

today.” 10/16/12 RP 201-02. The trial court also reminded the State of an instance where, after losing at trial, the State expressed regret that it not extend an offer to the defendant, and told the State that Mr. Lee’s case did not “appear to be the biggest drug case that ever hit the pike” and that the court’s recent experience with juries was that they were “becoming less and less enthralled with street-level drug cases.”

10/16/12 RP 203, 211.

The State returned with an offer agreeing to amend the charge of possession with intent to solicitation to deliver, reducing the sentence Mr. Lee faced to 45-60 months. 10/16/12 RP 215. The court explained the offer to Mr. Lee, comparing the possible sentences and emphasizing the worst possible outcome after trial. 10/16/12 RP 217. It also discussed the effect of “good time” on the sentence and the possibility of a DOSA. 10/16/12 RP 216-218. Mr. Lee continued to express confusion, and asked questions about the court’s decision on the motions to suppress rather than questions about the plea offer. 10/16/12 RP 218. When, despite the court’s lengthy explanation of the denial of the suppression motions, Mr. Lee did not indicate he wished to accept the plea, the court told Mr. Lee:

Let me tell you, Mr. Lee, my concern, it’s always something I have to be concerned about is that frequently things go wrong, a

conviction comes up, things go badly and then the defendant says, Judge, can I go back in time and do a redo and I go back [sic] and take what I turned down, and the answer is no, you can't.

10/16/12 RP 225 (emphasis added).

After this extraordinary intervention by the court, and a brief recess, Mr. Lee accepted the plea offer. 10/16/12 RP 235.

- c. Remand is required for Mr. Lee to consider whether he wants to withdraw his guilty plea.

As in Wakefield and Watson, the court urged Mr. Lee to plead guilty by intervening in plea negotiations and suggesting it was in Mr. Lee's best interests to accept the plea offer. Wakefield, 130 Wn.2d at 468; Watson, 159 Wn.2d 162 at 163-64. The court pressured the State to make an offer to Mr. Lee, and then told Mr. Lee that frequently things go badly for defendants at trial. This statement was an improper intervention by the court that directly advised Mr. Lee on the wisdom of pleading guilty. Watson, 159 Wn.2d at 165. The court's repeated and vocal involvement in convincing Mr. Lee to accept a plea offer "cast significant doubt on the voluntariness" of the guilty plea. 130 Wn.2d at 475. The appropriate remedy is to remand the case and permit Mr. Lee the opportunity to withdraw his guilty plea. Id.

2. Mr. Lee's guilty plea was not voluntary because he was not informed he was giving up his constitutional right to appeal the denial of his motions to suppress.

- a. A guilty plea is not valid if the defendant does not understand he is waiving important constitutional rights.

A defendant must be informed of all direct consequences of a plea at the time it is made. Isadore, 151 Wn.2d at 298; Ross, 129 Wn.2d at 284. He must enter into the plea with an understanding of these consequences, including that he necessarily waives important constitutional rights. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996).

A court determines whether a plea is voluntary based on the totality of the circumstances. Id. at 642. On appellate review, the State bears the burden of proving that the plea was valid, including showing the defendant had knowledge of the direct consequences of the plea. State v. Knotek, 136 Wn.App. 412, 423, 149 P.3d 676 (2006) (citing Ross, 129 Wn.2d at 287.) The court must permit the defendant to withdraw a guilty plea when he is misinformed as to the consequences of his plea. Isadore, 151 Wn.2d at 298.

- b. Mr. Lee was not informed, and did not understand, that he was giving up his constitutional right to appeal the denial of his motions to suppress when he pled guilty.

During Mr. Lee's repeated interactions with the court, he made it abundantly clear that he did not understand the court's decision denying his motions to suppress. 10/16/12 RP 207-210, 218-222. When the court asked Mr. Lee whether he understood the plea offer, Mr. Lee responded by stating that he did not understand why the officers had the right to pull him out of his car. 10/16/12 RP 218. Although the court explained its denial to Mr. Lee at length, it never informed him that by pleading he gave up any right to appeal the court's denial of his motions to suppress. 10/16/12 RP 207-210, 218-222, 225. Similarly, the plea agreement he reviewed with his counsel and acknowledged in court addressed his waiver of the right to appeal a determination of guilt after trial, but did not address the right to appeal the denial of his motions to suppress. 10/16/12 RP 239; CP 22-34.

The totality of the circumstances show that Mr. Lee was very concerned about the outcome of the suppression hearing and believed the court's decision was improper. His plea cannot be deemed voluntary when he was not informed, and showed no understanding, that he was waiving all of his objections to the suppression hearing by

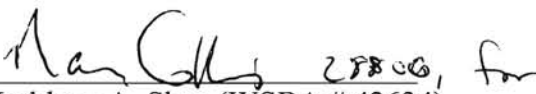
entering a plea of guilt. See Branch, 129 Wn.2d at 642. Mr. Lee's case must be remanded and Mr. Lee must be given the opportunity to withdraw his guilty plea. See Isadore, 151 Wn.2d at 298

F. CONCLUSION

For the foregoing reasons, Mr. Lee respectfully requests this Court remand the case for the opportunity for Mr. Lee to withdraw his guilty plea.

DATED this 18th day of October 2013.

Respectfully submitted,


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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 69892-3-I
)	
ANTHONY LEE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF OCTOBER, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY	(X)	U.S. MAIL
APPELLATE UNIT	()	HAND DELIVERY
KING COUNTY COURTHOUSE	()	
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SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF OCTOBER, 2013.

X _____ 

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