No. 44433-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Michael Gonzales,

Appellant.

Kitsap County Superior Court Cause No. 12-1-00705-3

The Honorable Judge Steven Dixon

Appellant's Opening Brief

Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

WASHINGTON STATE CASES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

ASSIGNMENTS OF ERROR

1. The trial court erred by admitting Mr. Gonzales's statements to Detective Martin at the hospital.

2. The trial court failed to properly determine the voluntariness of Mr. Gonzales's statements.

3. Mr. Gonzales's statements were involuntary, because they were extracted shortly after he'd suffered a broken pelvis in a serious car accident, while he was in critical care at the hospital, in pain, under the influence of pain medication, wearing a neck brace, with multiple tubes and lines attached to his arm and chest.

4. The trial court applied the wrong legal standard in finding that Mr. Gonzales's statements were voluntary.

5. The trial court erroneously applied a coherence standard to the voluntariness determination.

6. The trial court erred by finding that Mr. Gonzales was not in custody for *Miranda* purposes when Detective Martin questioned him at the hospital.

7. The trial court erred by denying Mr. Gonzales's motion to suppress.

8. The trial court erred by finding that police searched a damaged violin case as part of a valid inventory search.

9. The trial court erred by concluding that police conducted a lawful inventory search, in light of the state's failure to produce evidence that Officer Jensen complied with standardized criteria adopted by the Port Orchard Police Department.

10. The trial court erred by concluding that police conducted a lawful inventory search, in light of the state's failure to prove that the Port Orchard Police Department's standardized criteria for inventory searches complied with the Fourth Amendment and Wash. Const. art. I, § 7.

11. Officer Jensen had no justification for searching Mr. Gonzales's violin case, even if his inventory search was otherwise valid.

12. The trial court erred by entering Finding of Fact on 3.6 Hearing No. III.

13. The trial court erred by entering Finding of Fact on 3.6 Hearing No. V.

14. The trial court erred by entering Conclusion of Law on 3.6 Hearing No. II.

15. The trial court erred by entering Conclusion of Law on 3.6 Hearing No. III.

16. The trial court erred by entering Conclusion of Law on 3.6 Hearing No. IV.

17. The trial court erred by entering Conclusion of Law on 3.6 Hearing No. V.

18. The trial court erred by entering Conclusion of Law on 3.6 Hearing No. VII.

19. The trial court erred by entering Conclusion of Law on 3.5 Hearing No. II.

20. The trial court erred by entering Conclusion of Law on 3.5 Hearing No. III.

21. The trial court erred by entering Conclusion of Law on 3.5 Hearing No. IV.

22. The trial court erred by entering Finding of Fact on Bench Trial No. III.

23. The trial court erred by entering Finding of Fact on Bench Trial No. IV.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An accused person's involuntary statements may not be admitted at trial for any purpose. Here, the trial court erroneously admitted Mr. Gonzales's statements, which Detective Martin extracted from him shortly after he'd suffered

a broken pelvis in a serious car accident, while he was in critical care at the hospital, in pain, under the influence of pain medication, wearing a neck brace, with multiple tubes attached to his arm and chest. Did the admission of Mr. Gonzales's involuntary statements violate his Fifth and Fourteenth Amendment privilege against self-incrimination?

2. A suspect is in custody for *Miranda* purposes when, considering all the circumstances, a reasonable person in the suspect's position would not feel free to terminate the conversation and leave. Here, Detective Martin interrogated Mr. Gonzales at a time when he could not leave or ignore Detective Martin's questions. Did the trial court violate Mr. Gonzales's constitutional privilege against self-incrimination by admitting his unwarned custodial statements into evidence?

3. The state and federal constitutions prohibit warrantless inventory searches unless the state proves that officers followed standardized procedures restricting their discretion in a manner consistent with the Fourth Amendment and Wash. Const. art. I, § 7. Here, the prosecution did not introduce evidence that (1) the Port Orchard Police Department has adopted standardized procedures for inventory searches, (2) that such procedures comply with constitutional requirements, or (3) that Officer Jensen followed such procedures. Should the trial judge have excluded evidence seized in violation of Mr. Gonzales's rights under the Fourth Amendment and Wash. Const. art. I, § 7?

4. When police impound property, they are in the position of involuntary bailees with a duty of slight care over the property. Here Officer Jensen opened a broken violin case to examine its contents prior to impounding Mr. Gonzales's car. Did the police lack proper justification for opening the violin case to inventory its contents?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Michael Gonzales was in a car accident. Once they were able to get him out of the car, he was transported to the hospital. CP 13. The car was damaged and required towing. CP 14.

After Mr. Gonzales was gone, Officer Jensen searched the car. He found a closed violin case. The accident damaged the latches, and it wasn't latched. The officer opened it and found a sawed-off shotgun. CP 14; RP 26-27, 38-39. He also found a closed and latched ammunition box. He opened that too, finding a pistol and ammunition. CP 14-15; RP 30-31.

Detective Martin went to the hospital to talk to Mr. Gonzales. Mr. Gonzales was being treated in the critical care unit; he had multiple tubes going in and out of him and was not able to leave. He was in pain and had been given pain medication. CP 11; RP 6-8, 9-10. When the officer asked him if his fingerprints would be on the gun, Mr. Gonzales said yes. CP 156.

Mr. Gonzales had been convicted of a felony in the past, and the state charged Mr. Gonzales with Unlawful Possession of a Firearm in the First Degree. CP 1, 156-157.

Mr. Gonzales filed a suppression motion, arguing that the warrantless search of the car violated his rights. He also argued that his

statement to the officer from his hospital bed should not be admitted at trial. Motion to Suppress Evidence, Response to Defendant's Suppression Motion, Reply to State's Response, Supp. CP.

At the hearing, Officer Jensen testified that he was conducting a vehicle inventory and looking for the car's registration when he did the search of the car. CP 14; RP 24-25. He acknowledged that he did not state that he was doing an inventory search in his police report on the incident. RP[1] 35. He claimed that he always searches for hazardous or valuable items when he has a car towed. CP 14; RP 24-26.

Detective Martin testified that Mr. Gonzales appeared oriented and responsive and answered his questions appropriately. He did not give Mr. Gonzales his rights, and he did not arrest him. Mr. Gonzales could not remember the conversation, as he was on pain medication throughout his hospital stay. CP 11; RP 4-11.

The court found the search of the violin case lawful. CP 15; RP 57-59. The trial judge ruled that the officer did not need to seek consent for the search since Mr. Gonzales had been taken to the hospital. CP 15. Further, the court suppressed the contents of the ammunition box, since by

[1] The only volume of the Verbatim Report of Proceedings relevant to this appeal is from October 8, 2012, and will be cited as RP.

the time the officer conducted that search, he had a reasonable suspicion that it could be evidence of criminal activity. CP 15.

The court denied the defense motion to suppress Mr. Gonzales's statement. CP 10-12; RP 18-19.

The parties submitted the case to the bench with a factual stipulation. CP 18-154. The court found Mr. Gonzales guilty of Unlawful Possession of a Firearm in the First Degree. CP 157.

After being sentenced, Mr. Gonzales timely appealed. CP 169-180.

ARGUMENT

I. THE CONVICTION VIOLATED MR. GONZALES'S CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION.

A. Standard of Review

Appellate courts review constitutional violations *de novo*. *Bellevue School Dist. v. E.S.*, 171 Wn.2d 695, 702, 257 P.3d 570 (2011). A *Miranda* claim is an issue of law, which also requires *de novo* review. *State v. Daniels*, 160 Wn.2d 256, 261, 156 P.3d 905 (2007). The voluntariness of a person's statement is, likewise, a legal question, reviewed *de novo*. *State v. McReynolds*, 104 Wn. App. 560, 575, 17 P.3d 608 (2000). Finally, whether a person is in custody for *Miranda* purposes

is a mixed question of law and fact also subject to *de novo* review. *United States v. Rogers*, 659 F.3d 74, 77 (1st Cir. 2011).

B. Mr. Gonzales's statement to Detective Martin was involuntary and should have been suppressed.

The Fifth Amendment to the U.S. Constitution provides that "No person shall… be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V.[2] The privilege against self-incrimination applies in state prosecutions. U.S. Const. Amend. XIV; *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

Before an accused person's statements can be admitted into evidence, the government must establish admissibility under the due process "voluntariness" test. *Dickerson v. United States,* 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) The voluntariness analysis "takes into account the totality of the circumstances to examine whether a defendant's will was overborne" by the circumstances surrounding the confession. *Id.* (internal quotations and citation omitted). The privilege against self-incrimination precludes use of an involuntary statement

[2] The Washington State Constitution similarly provides that "No person shall be compelled in any case to give evidence against himself…" Wash. Const. art. I, § 9.

against an accused person for any purpose. *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

The restriction on the use of involuntary statements is "equally applicable to a drug-induced statement." *Townsend v. Sain*, 372 U.S. 293, 307, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), *overruled on other grounds by Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318 (1992). If, by reason of extreme intoxication, a statement is not "the product of a rational intellect and a free will... it is not admissible and its reception in evidence constitutes a deprivation of due process." *Gladden v. Unsworth*, 396 F.2d 373, 380-381 (1968) (citing *Townsend,* 372 U.S. 293). A drug-induced statement can be involuntary even absent improper motives on the part of law enforcement. *Townsend*, 372 U.S. at 309.

The burden of establishing voluntariness rests with the prosecution. *United States v. Lall*, 607 F.3d 1277, 1285 (11th Cir. 2010). Here, the state failed to sustain its burden.

Detective Martin questioned Mr. Gonzales shortly after Mr. Gonzales was severely injured in a car accident. RP 13. The detective found Mr. Gonzales in the critical care unit of the hospital. CP 11. Mr. Gonzales had several tubes attached to him, including one in his chest. RP 6-7, 13; CP 11. The court found that Mr. Gonzales "appeared to be in pain and was likely on pain medication" when he made his statement. CP 11.

The court also found that Mr. Gonzales was "constantly taking pain medications" during his conversation with the detective. CP 11. The prosecution did not introduce evidence to prove that Mr. Gonzales had recovered from the shock of the accident, that his pain levels were manageable, or that the pain medication did not affect his ability to reason or use his "rational intellect." *See generally* RP; *Gladden*, 396 F.2d at 380-381.

The prosecution failed to show that Detective Martin's decision to question Mr. Gonzales under these circumstances resulted in statements that were voluntarily and freely given. Accordingly, the state failed to meet its heavy burden. *Lall*, 607 F.3d at 1285.

The court focused on Mr. Gonzales's ability to understand and answer the questions rather than whether his statement was the product of rational choice. CP 11; *Dickerson,* 530 U.S. at 434. The fact that Mr. Gonzales gave coherent answers to Detective Martin's questions has no bearing on whether his decision to talk was voluntary. *See Townsend,* 372 U.S. at 320 (rejecting the coherency standard).

At the suppression hearing, the judge also focused on the facts that Mr. Gonzales was not under arrest and that Detective Martin had not threatened or coerced him. RP 18-19; CP 11-12. Whether Mr. Gonzales was under arrest, however, is not determinative of whether his statement

was voluntary for due process purposes. *See e.g. Eisen v. Picard*, 452 F.2d 860, 865 (1st Cir. 1971). Likewise, when the accused's will is overborne for other reasons – such as drugs -- a confession is involuntary even absent explicit police threats and coercion. *See e.g. Townsend*, 372 U.S. 293.

The state did not establish the voluntariness of Mr. Gonzales's statements. His conviction must be reversed, the statements suppressed, and the case remanded for a new trial. *Townsend,* 372 U.S. 293.

C. Mr. Gonzales's statements should have been suppressed as the product of custodial interrogation without benefit of *Miranda*.

Whether a person is "in custody" for *Miranda* purposes depends on whether or not a reasonable person would have felt free to terminate the interrogation and leave. *J.D.B. v. N. Carolina*, 131 S.Ct. 2394, 2402, 180 L.Ed.2d 310 (2011). The inquiry is an objective one, looking to the totality of the circumstances. *Id.* A person is in custody if, considering all of the circumstances, a reasonable person would not have felt free to leave. *Id.*

When a suspect can't leave the place of interrogation because of "circumstances incident to medical treatment," the question is whether s/he was "at liberty to terminate the interrogation and 'cause the [officers] to leave.'" *United States v. Infante*, 701 F.3d 386, 396 (1st Cir. 2012) *cert.*

denied, 133 S.Ct. 2841 (U.S. 2013) (quoting *United States v. New,* 491 F.3d 369, 373 (8th Cir.2007)).

An officer can take many actions that transform hospital questioning into custodial interrogation. These include, for example: being present when the patient wakes up, failing to tell the patient s/he is free to leave and is not under arrest,[3] closing the door to the patient's room, sitting in close proximity to the patient, sitting between the patient and the door, questioning with the intent to elicit incriminating information, or structuring the interview to consist of "questioning and short answers" rather than a narrative.[4]

At the time of the interrogation, Mr. Gonzales was receiving treatment in an intensive care unit with multiple tubes attached to his body for medical reasons. RP 6-7, 10, 12-13. Mr. Gonzales's neck was restrained in a medical collar. RP 6-7. His pelvis was broken in two places. RP 12-13. He was in extreme pain and unable to move. RP 12-13; CP 11-12. Detective Martin woke him up and questioned him. Martin structured the questioning so that Mr. Gonzales could give short answers rather than a narrative, and asked questions designed to elicit

---

[3] *Clay v. State*, 290 Ga. 822, 825, 725 S.E.2d 260 (2012), *reconsideration denied* (Apr. 11, 2012).

[4] *Effland v. People*, 240 P.3d 868, 875 (Colo. 2010).

incriminating answers. He did not tell Mr. Gonzales he was free to leave, or notify him that he was not under arrest. The prosecution failed to establish the size of the room, whether or not Detective Martin closed the door, or where Martin sat in relation to the door and to Mr. Gonzales. RP 4-11.

Under these circumstances, a reasonable person would not have felt free to terminate the interrogation and leave. Indeed, Mr. Gonzales was physically unable to leave because he was in a hospital bed with a broken pelvis and multiple tubes attached to his body.[5] RP 6-7, 10, 12-13; CP 11-12. Nor would a reasonable person feel free to tell the interrogating officer to leave.

Detective Martin did not give Mr. Gonzales *Miranda* warnings prior to questioning him. RP 9. Because Mr. Gonzales was subjected to custodial interrogation without benefit of *Miranda,* his statements should have been suppressed. *State v. Hickman*, 157 Wn. App. 767, 776, 238 P.3d 1240 (2010). Accordingly, his conviction must be vacated, the statements suppressed, and the case remanded for a new trial. *Id.*

[5] Mr. Gonzales was receiving medical care; had he tried to get away from Detective Martin, he would not have continued to receive treatment. RP 6-7, 10, 12-13; CP 11-12.

II. THE SEARCH OF MR. GONZALES'S VIOLIN CASE VIOLATED HIS RIGHTS UNDER THE FOURTH AMENDMENT AND WASH. CONST. ART. I, § 7.

A. Standard of Review.

The validity of a warrantless search is reviewed *de novo*. *State v. Westvang*, --- Wn. App. ---, 301 P.3d 64, 68 (May 21, 2013). A trial court's findings of fact are reviewed for substantial evidence; conclusions of law are reviewed de novo. *Id.* In the absence of a finding on a factual issue, an appellate court presumes that the party with the burden of proof failed to sustain its burden on the issue. *Yakima Police Patrolmen's Ass'n v. City of Yakima*, 153 Wn. App. 541, 562, 222 P.3d 1217 (2009).

B. No exception to the warrant requirement justifies the warrantless search of Mr. Gonzales's violin case.

Both the Fourth Amendment and art. I, § 7 prohibit searches and seizures without a search warrant. *Westvang,* 301 P.3d at 68; U.S. Const Amend IV; XIV; art. I, § 7. This "blanket prohibition against warrantless searches is subject to a few well guarded exceptions…" *Id.* When police have ample opportunity to obtain a warrant, courts do not look kindly on their failure to do so. *State v. White*, 141 Wn. App. 128, 135, 168 P.3d 459 (2007) (*White* I) (internal citation omitted).

The state bears the heavy burden of showing that a search falls within one of the narrowly drawn exceptions to the warrant requirement.

Westvang, 301 P.3d at 68. Before evidence seized without a warrant can be admitted at trial, the state must establish an exception to the warrant requirement by clear and convincing evidence. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

Unlike the Fourth Amendment, art. I, § 7 focuses on individual rights and the expectation of privacy, not the reasonableness of police conduct. *State v. Monaghan*, 165 Wn. App. 782, 787, 266 P.3d 222 (2012). Thus, a warrantless search presumptively violates the state constitution whether reasonable or not. *Id.* Art. I , § 7 specifically confers a privacy interest in vehicles and their contents. *State v. Snapp*, 174 Wn.2d 177, 187, 275 P.3d 289 (2012).

1. The state did not provide sufficient facts to establish a valid inventory search.

The inventory search is a recognized exception to the warrant requirement. *State v. White*, 135 Wn.2d 761, 769-70, 958 P.2d 982 (1998) (*White II)*; *State v. Smith*, 76 Wn. App. 9, 13, 882 P.2d 190 (1994). Such searches "perform an administrative or caretaking function." *Smith,* 76 Wn. App. at 13.

The criteria governing the propriety of inventory searches are largely unrelated to the justifications for other exceptions to the warrant requirement. *South Dakota v. Opperman*, 428 U.S. 364, 370 n.5, 96 S.Ct.

3092, 49 L.Ed.2d 1000 (1976). Additionally, art. I, § 7 provides more protection against inventory searches than the Fourth Amendment. *White II*, 135 Wn.2d at 768-69.

To justify a search under the inventory exception, the prosecution must prove that the law enforcement conduct the search pursuant to "standardized" procedures. *Florida v. Wells*, 495 U.S. 1, 4, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990); *see also State v. Dugas*, 109 Wn. App. 592, 597-598, 36 P.3d 577 (2001) ("Inventory searches are regularly upheld *when they are conducted according to standardized police procedures* which do not give excessive discretion to the police officers, and when they serve a purpose other than discovering evidence of criminal activity") (emphasis added). Further, the policy must not allow individual officers "so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of a crime." *Wells*, 495 U.S. at 4 (*quoting Colorado v. Bertine*, 497 U.S. 367, 376, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987)).

In *Wells*, an officer opened a locked suitcase found inside a car pursuant to an inventory search. *Wells,* 495 U.S. at 2. The suppression hearing did not produce any evidence regarding department policy on opening closed containers during an inventory search. *Id.* at 3. Under these circumstances, the Supreme Court ordered the evidence suppressed:

> [A]bsent such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment…

Wells, 495 U.S. at 5.

By requiring compliance with standardized procedures, the inventory search doctrine removes the inference that police have engaged in a search for evidence. *United States v. Taylor*, 636 F.3d 461, 464 (8th Cir. 2011), *rehearing denied*. Under the Fourth Amendment, failure to delineate and comply with standardized procedures can invalidate an inventory search.[6] *Wells*, 495 U.S. at 4-5; see *also United States v. Proctor*, 489 F.3d 1348, 1354 (D.C. Cir. 2007); *United States v. Maple*, 348 F.3d 260, 265 (D.C. Cir. 2003).

Officer Jensen testified that he conducted the inventory search in the same manner as other Port Orchard Police Officers. RP 33. However, the officer did not testify to a standardized procedure. RP 20-40. Officer Jensen did not outline any criteria for determining what to search or seize pursuant to inventory of an impounded car. *Id.* Rather, the officer simply stated that he looked for "anything that might have value." RP 26.

A policy to search everything in a car for something of value does not qualify as "standardized criteria" or "established routine." *Wells,* 495

[6] The 8th Circuit will invalidate an inventory search conducted in violation of standard procedure if there is "'[S]omething else'… present to suggest that the police were engaging in their criminal investigatory function, not their caretaking function." *Taylor, at* 465 (alteration in original) (citation omitted).

U.S. at 3. Such a policy does not "regulate;" nor is it "designed to produce an inventory," both of which are required under *Wells*. 495 U.S. at 4. As in *Wells*, the policy followed by Officer Jensen appears to afford officers unbounded discretion in determining whether to open a closed container pursuant to an inventory search. *Wells*, 495 U.S. at 4. Such a policy violates the Fourth Amendment. *Id.* at 4-5.

The court did not enter any findings regarding the existence or requirements of any standardized procedures governing inventory searches conducted by Port Orchard police officers.[7] Nor did the court find that Officer Jensen followed standardized procedures. *See generally* CP 13-16. The court simply found that Officer Jensen followed "department practice, and his practice, [of looking] for items of possible significant value or hazard." CP 14. This finding does not establish a "standardized criteria" or "established routine." *Wells,* 495 U.S. at 3.

Even if the evidence did establish a "standardized criteria" or "established routine," the standards violate the Fourth Amendment by affording individual officers unbounded latitude in deciding whether to

[7] In the absence of a factual finding on the subject, the prosecution is deemed to have failed to meet its burden of proof. *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 524, 22 P.3d 795 (2001).

open closed containers. *Wells*, 495 U.S. at 4. Such limitless discretion violates the Fourth Amendment. *Id.*

The warrantless search of Mr. Gonzales's violin case violated the Fourth Amendment. *Wells*, 495 U.S. at 4-5. The evidence must be suppressed, the conviction reversed, and the case remanded for a new trial. *Dugas*, 109 Wn. App. at 599.

2. Even if the search of the car was a valid inventory search, it did not justify opening Mr. Gonzales's violin case.

An officer may not open a piece of luggage or a locked trunk pursuant to an inventory search unless the owner consents. *State v. Houser*, 95 Wn.2d 143, 158, 622 P.2d 1218 (1980); *White II*, 135 Wn.2d 761. Absent exigent circumstances, an inventory search "only justifies noting such an item as a sealed unit." *Houser*, 95 Wn.2d at 158.

The purpose of an inventory search is to protect valuables from theft, protect the police from claims of theft,[8] and protect the public from dangerous items left in impounded cars. *White II*, 135 Wn.2d at 769. The scope of an inventory search cannot exceed that necessary to accomplish these goals. *Id.* The *White* court invalidated an inventory search of a locked trunk, finding that the "countervailing privacy interests of the

[8] The *White* court questioned the justification of protecting police from claims of theft or property damage, noting that involuntary bailees have a duty only of slight care over an impounded car and its contents. *White II*, 135 Wn.2d at 776.

individual" outweigh the purported need to protect property in the locked trunk of an impounded car. *White II*, 135 Wn.2d at 767.

Officer Jensen found a closed violin case in Mr. Gonzales's car. CP 14. The violin case was originally located in the trunk of the car but was flung into the backseat by the force of the accident. RP 38. Officer Jensen suspected that the case contained a violin or something valuable. RP 26.

These facts do not justify Officer Jensen's warrantless search of the violin case. *White II*, 135 Wn.2d at 767. The officer could have achieved the goal of protecting Mr. Gonzales's property by simply securing the closed case—photographing the external damage, if necessary—and "noting it as a sealed unit." *Houser*, 95 Wn.2d at 158. Officer Jensen had ample time to secure a warrant for the search of the case if he had probable case to do so. *White I*, 141 Wn. App. at 135.

The warrantless search of Mr. Gonzales's violin case cannot be justified by the inventory search exception. *White II*, 135 Wn.2d at 771-72. The evidence must be suppressed and the conviction reversed. *Id.*

CONCLUSION

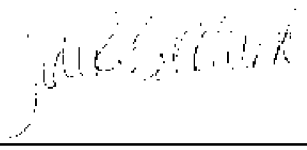
Mr. Gonzales's statement – made while he was in the critical care unit of the hospital, in considerable pain, on pain medication, and attached

to multiple tubes for treatment purposes – was involuntary. Because he was not objectively free to leave, he was also in custody for *Miranda* purposes, and should have been administered *Miranda* warnings. Mr. Gonzales's statement to Detective Martin must be suppressed.

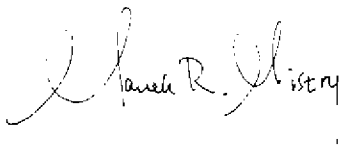
Officer Jensen conducted a warrantless search of Mr. Gonzales's violin case without the benefit of clear guidelines limiting such searches. An inventory search under a policy that permits boundless officer discretion violates the Fourth Amendment. Even if the search of Mr. Gonzales's car was lawful, it did not justify the warrantless search of his violin case, which could have been noted as a sealed unit. The evidence found in Mr. Gonzales's violin case must be suppressed, his conviction reversed, and his case remanded for a new trial.

Respectfully submitted on July 25, 2013,

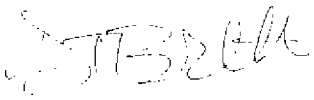
BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Michael Gonzales, DOC #724909
Airway Heights Corrections Center
PO Box 1899
Airway Heights, WA 99001

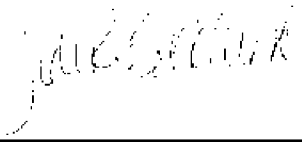
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Kitsap County Prosecuting Attorney
kcpa@co.kitsap.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 25, 2013.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

July 25, 2013 - 7:01 AM

Transmittal Letter

Document Uploaded: 444330-Appellant's Brief.pdf

Case Name: State v. Michael Gonzales

Court of Appeals Case Number: 44433-0

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: **backlundmistry@gmail.com**

A copy of this document has been emailed to the following addresses:

kcpa@co.kitsap.wa.us