

70841-4

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Court of Appeal Cause No. 70841-4

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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QUANG D. NGUYEN, *Appellant*,

v.

PORT OF SEATTLE POLICE DEPARTMENT, *Respondents*,

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

a. CANINE SNIFF AFTER DETAINMENT AND QUESTIONING

The Port of Seattle Police Department has stated that Mr. Nguyen did not have a reasonable expectation of privacy in that surrounded him or his luggage in the airport. This is correct; Mr. Nguyen did not argue that he had an expectation of privacy when he was in the public areas of the airport. However, Mr. Nguyen was taken to a room, outside of the public area and questioned by law enforcement. Mr. Nguyen voluntarily answered the questions and allowed his luggage to be searched by law enforcement. However, the canine search took place after the currency had been removed from Mr. Nguyen's luggage and placed in a secondary bag and taken to the public area of the airport. The canine search then took place.

As a general rule, warrantless searches and seizures are per se unreasonable. *Jacobson v. City of Seattle*, 98 Wn.2d 668, 672, 658 P.2d 653, 655 (1983). There are exceptions to this rule, as the Port of Seattle Police Department has stated in their brief. However, the facts of this case are different than other cases where a canine sniff has been found not to be a search. In this case Mr. Nguyen had already been questioned. The currency and other items in his luggage had already been found by law

enforcement. The currency was taken from Mr. Nguyen's possession and put into a public area of the lobby where the search with the canine was conducted. This canine sniff did not occur as Mr. Nguyen was walking through the airport, nor did it happen when Mr. Nguyen was waiting to board his plane. This canine sniff occurred after Mr. Nguyen had been detained, searched and questioned by law enforcement. Mr. Nguyen had been informed that he was free to leave at any time during the questioning by law enforcement; however, there is no indication that he was ever free to leave with his money.

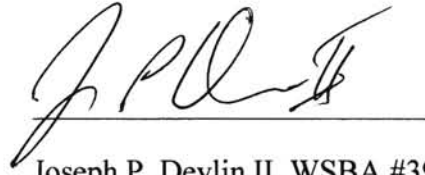
The canine sniff in this case was not minimally intrusive for the fact that the money was removed from Mr. Nguyen's possession and placed in a different bag. It was then removed to a public area of the airport and the search was conducted there. This search was conducted after questioning and searching by law enforcement. Therefore, this was a secondary search that required either a search warrant or permission by Mr. Nguyen. Neither of which occurred.

#### B. CONCLUSION

For the reasons here, and stated in the Appellant's opening brief, this Court should suppress the canine sniff and remand this case for further proceedings.

November 13, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. P. Devlin II", written over a horizontal line.

Joseph P. Devlin II, WSBA #39674

Attorney for Appellant