

73155-6

73155-6

FILED
September 25, 2015
Court of Appeals
Division I
State of Washington

NO. 73155-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

TARAILLE CHESNEY,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY A. BRADSHAW

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

MICHELLE C. GREGOIRE
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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A. ISSUE PRESENTED

Findings of fact and conclusions of law pursuant to CrR 3.6 and CrR 6.1(d) may be submitted and entered while an appeal is pending if, under the facts of the case, there is no appearance of unfairness and the defendant is not prejudiced. The trial court entered the findings in this case while the appeal was pending and are consistent with the trial court's ruling. Is remand unnecessary? Have the written findings of fact and conclusions of law been properly entered by the trial court in this case?

B. STATEMENT OF THE CASE

1. **PROCEDURAL FACTS.**

Defendant Taraille Chesney was charged by information with violation of the Uniform Controlled Substances Act under RCW 69.50; specifically, the State alleged that on November 5, 2013, Chesney possessed cocaine. CP 1-5.

Trial occurred in December 2014. The trial court held CrR 3.5 and CrR 3.6 hearings in advance of trial. The trial court granted the State's motion pursuant to CrR 3.5, and denied Chesney's CrR 3.6 motion to suppress evidence. RP 61-64, 70-75. The defendant subsequently waived his right to a jury trial. CP 25.

The trial court found Chesney guilty by way of stipulated facts trial. RP 98-99; CP 15-24. At sentencing, the court imposed a residential drug offender sentencing alternative with inpatient treatment. RP 115-16; CP 35-43. Findings of fact and conclusions of law pursuant to CrR 3.5 were filed with the trial court at sentencing. CP 29-32.

C. ARGUMENT

1. REMAND FOR ENTRY OF CrR 3.6 AND CrR 6.1 FINDINGS IS NOT NECESSARY BECAUSE THE TRIAL COURT ENTERED FINDINGS WHILE THIS APPEAL WAS PENDING AND CHESNEY CANNOT DEMONSTRATE PREJUDICE.

Chesney seeks remand for the trial court to enter its CrR 3.6 and CrR 6.1 findings of fact and conclusions of law. Remand is not necessary because the trial court entered written findings on CrR 3.6 and CrR 6.1 while this case was pending appeal, and Chesney cannot show any prejudice. Appendix A; CP 69-72, 73-75.

Findings of fact and conclusions of law may be submitted and entered while an appeal is pending if there is no prejudice to the defendant and no indication that the findings and conclusions were tailored to meet the issues presented on appeal.

State v. Quincy, 122 Wn. App. 395, 398, 95 P.3d 353 (2004),
review denied, 153 Wn.2d 1028 (2005).

A mere delay in the entry of the findings does not itself support a claim of prejudice. State v. Head, 136 Wn.2d 619, 625, 964 P.2d 1187 (1998). In State v. Smith, the court held that the State's request at oral argument for a remand to enter the findings would have caused unnecessary delay and was thus prejudicial. 68 Wn. App. 201, 208-09, 842 P.2d 494 (1992). However, unlike Smith, the trial court already entered findings pending this appeal. Appendix A; CP 69-72, 73-75. This entry did not cause unnecessary delay in the resolution of Chesney's appeal. Thus, there is no resulting prejudice.

Chesney cannot establish prejudice resulting from the content of the entered findings. A review of the CrR 3.6 and CrR 6.1 findings illustrates that the State did not tailor them to address Chesney's claims on appeal. Appendix A; CP 69-72, 73-75. The language of the findings is consistent with the trial court's oral rulings on CrR 3.6 and CrR 6.1. RP 70-75, 98-99; CP 15-24. Moreover, the trial prosecutor who drafted the findings of fact had no knowledge of the issues raised in the Brief of Appellant.

CP 76-77, 78-90. The trial court's CrR 3.6 and CrR 6.1 findings are properly before this Court.

In light of the above, Chesney cannot demonstrate an appearance of unfairness or prejudice. The trial court's CrR 3.6 and CrR 6.1 findings of fact and conclusions of law are properly before this Court.

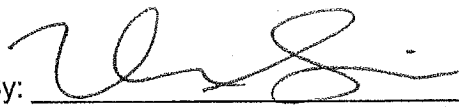
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Chesney's conviction.

DATED this 24th day of September, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
MICHELLE C. GREGOIRE, WSBA #46467
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

APPENDIX A
(CP 69-90)

- 1 d) At about 10:47 am, Ofc. Didier, Johnson, and Diezi observed the defendant, Mr. Chesney
2 in Prefontaine Park.
- 3 e) Ofc. Johnson and Ofc. Didier recognized the defendant from previous contacts, and Ofc.
4 Johnson is on a first name basis with the defendant.
- 5 f) The officers approached the defendant after observing him to be holding a lighter and a
6 clear plastic bag containing a white substance that appeared to be crack cocaine in his left
7 open-face palm.
- 8 g) Ofc. Johnson observed the white substance to be in a clear plastic bag and could see the
9 contents of the bag.
- 10 h) Ofc. Johnson believed the observed substance was clearly cocaine based on his
11 observations and taking into consideration his training and experience.
- 12 i) Ofc. Johnson asked the defendant if that was cocaine in his hand. The defendant
13 responded that it was not cocaine but crushed pills and began to conceal the suspected
14 crack cocaine in his hand.
- 15 j) Ofc. Johnson and Ofc. Didier began to take ahold of the defendant's hands to place him
16 under arrest.
- 17 k) The defendant closed his fist and began to crush the suspected crack cocaine in his hand.
18 Ofc. Johnson believed the defendant was going to destroy the evidence, and recovered
19 the substance from the defendant's hand.
- 20 l) Ofc. Didier and Ofc. Diezi placed the defendant in handcuffs.
- 21 m) The defendant was searched incident to arrest. Numerous pills were located on the
22 defendant as well as a glass pipe and long cooling tube.

23 2. THE DISPUTED FACTS:

24
WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 2

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n) There are no disputed facts.

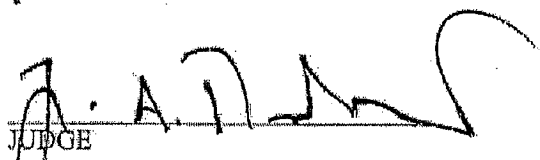
4. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE SOUGHT TO BE SUPPRESSED:

a. PHYSICAL EVIDENCE

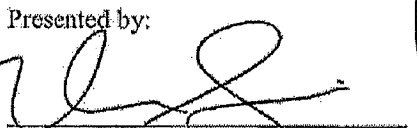
- i. Facts and circumstances sufficient for a reasonably cautious person to believe an offense was being committed. Thus, the officers had probable cause to arrest the defendant.
- ii. Exigent circumstances justified the seizure of the drugs from the defendant's hand as Ofc. Johnson believed the defendant was going to destroy evidence.
- iii. The crack cocaine seized from the defendant's hand is admissible in the state's case in chief, and the defense motion to suppress the evidence is denied.

In addition to the above written findings and conclusions, the court incorporates by reference its oral findings and conclusions.


Signed this 26th day of August, 2015.



 JUDGE

Presented by:


 Michelle C. Gregoire, WSBA #46467
 Deputy Prosecuting Attorney



 Mark Flora, WSBA #14026

WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW - 3

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Attorney for Defendant

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 4

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FILED
KING COUNTY, WASHINGTON

AUG 21 2015

SUPERIOR COURT CLERK
BY Victor Bigornia
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 13-1-13492-2 SEA

vs.

TARAILLE DUJUAN CHESNEY,

Defendant.

ORDER ON STIPULATED FACTS -
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The court, having approved the defendant's submittal of this action to the court for a stipulated facts trial, having read the police documents and other materials submitted into evidence, and having heard the argument of counsel for the State and for the defendant, to wit: the Court's findings and conclusions as to CrR 3.5 and CrR 3.6 hearings, testimony from the CrR 3.5 and CrR 3.6 hearings, information, superform, certification for probable cause, cocaine within a plastic baggie, and the Washington State Patrol crime laboratory report, now makes the following; *in addition to incorporating its oral findings/conclusions.*

FINDINGS OF FACT

I.

The following events took place within King County, Washington:

- a) On November 5, 2013, Ofc. Didier, Johnson, and Diezi were working mountain bike patrol with the Seattle Police Department.
- b) At about 10:47 am, Ofc. Didier, Johnson, and Diezi observed the defendant, Mr. Chesney in Prefontaine Park.

ORDER ON STIPULATED FACTS - FINDINGS OF
FACT AND CONCLUSIONS OF LAW - 1

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- 1 c) Ofc. Johnson and Ofc. Didier recognized the defendant from previous contacts, and Ofc.
2 Johnson is on a first name basis with the defendant.
- 3 d) The officers approached the defendant after observing him to be holding a lighter and a
4 clear plastic bag containing a white substance that appeared to be crack cocaine in his left
5 open-face palm.
- 6 e) Ofc. Johnson observed the white substance to be in a clear plastic bag and could see the
7 contents of the bag.
- 8 f) Ofc. Johnson believed the observed substance was clearly cocaine based on his
9 observations and taking into consideration his training and experience.
- 10 g) Ofc. Johnson asked the defendant if that was cocaine in his hand. The defendant
11 responded that it was not cocaine but crushed pills and began to conceal the suspected
12 crack cocaine in his hand.
- 13 h) Ofc. Johnson and Ofc. Didier began to take hold of the defendant's hands to place him
14 under arrest.
- 15 i) The defendant closed his fist and began to crush the suspected cocaine in his hand. Ofc.
16 Johnson believed the defendant was going to destroy the evidence, and recovered the
17 substance from the defendant's hand.
- 18 j) Ofc. Didier and Ofc. Diezi placed the defendant in handcuffs.
- 19 k) The defendant was searched incident to arrest.
- 20 l) The suspected cocaine was weighed and tested at the West Precinct and tested positive
21 for cocaine.
- 22
23
24

ORDER ON STIPULATED FACTS - FINDINGS OF
FACT AND CONCLUSIONS OF LAW - 2

Daniel T. Satterberg, Prosecuting Attorney
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1 m) The drugs located on Mr. Chesney were subsequently submitted to the Washington State
2 Patrol Crime Laboratory for testing. Forensic Scientist Donna Wilson tested and certified
3 that the .14 grams of off-white chunky material she tested was found to contain cocaine.

4
5 And having made those Findings of Fact, the Court also now enters the following:

6 CONCLUSIONS OF LAW

7 I.

8 The above-entitled court has jurisdiction of the subject matter and of the defendant
9 Taraille Dujuan Chesney in the above-entitled cause.

10 II.

11 The following elements of the crime charged have been proven by the State beyond a
12 reasonable doubt: that on or about November 5, 2013, the defendant, Mr. Taraille Dujuan
13 Chesney unlawfully and feloniously possessed cocaine, a controlled substance. These acts
14 occurred in the state of Washington.

15 III.

16 The defendant is guilty of the crime of Violation of the Uniform Controlled Substances
17 Act- Possession of Cocaine as charged in the Information.

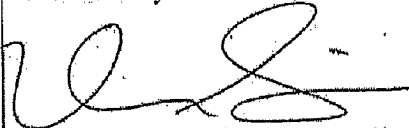
18 IV.

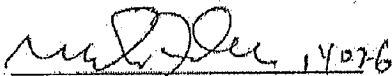
19 Judgment should be entered in accordance with Conclusion of Law III.

20 DONE IN OPEN COURT this 20th day of August, 2015.

21 
22 JUDGE TIMOTHY BRADSHAW

23 Presented by:

24 
25 Michelle C. Gregoire, WSBA# 46467
26 Deputy Prosecuting Attorney

27 
28 Defendant, Attorney for

ORDER ON STIPULATED FACTS - FINDINGS OF
FACT AND CONCLUSIONS OF LAW - 3

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CASE NUMBER: 13-1-13492-2 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 13-1-13492-2 SEA

vs.

DECLARATION OF DEPUTY
PROSECUTING ATTORNEY

TARAILLE DUJUAN CHESNEY,

Defendant.


I, the undersigned, hereby declare that I am 18 years of age, I am competent to testify in a court of law, and I am familiar with the facts contained herein;

- 1. I am a Deputy Prosecuting Attorney with the King County Prosecutor's Office.
- 2. I was the trial attorney in the above captioned case.
- 3. I was contacted by my office's appellate unit on July 29th, 2015 and informed that the findings of fact and conclusions of law pursuant to a stipulated facts trial could not be located in the electronic court record or the original prosecutor's file. I verified that the documents were not included in the electronic court file.

DECLARATION OF DEPUTY PROSECUTING
ATTORNEY - 1

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

- 1 5. I searched my electronic files and was unable to locate an order on stipulated facts – findings
2 of fact and conclusions of law.
- 3 6. I obtained a recording of the pretrial hearings relevant to the stipulated facts trial. I reviewed
4 the relevant portions of the recording and drafted findings of fact and conclusions of law.
- 5 7. I presented these drafted findings and conclusions to Mark Flora, the defendant's trial attorney,
6 on August 18, 2015. We did not discuss the appeal.
- 7 8. Mark Flora signed the findings and conclusions and returned them to me.
- 8 9. On August 20, 2015, I provided the findings and conclusions signed by the parties to the trial
9 court.
- 10 10. On August 20, 2015, the trial judge, the Honorable Timothy Bradshaw, signed the findings
11 and conclusions pursuant to stipulated facts, and they were filed with the court.
- 12 11. I have not reviewed any appellate briefing related thereto in the above captioned case.
- 13 Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is
14 true and correct. Signed and dated by me this 9th day of September, 2015, at Seattle,
15 Washington.



Michelle Gregoire, WSBA #46467
Deputy Prosecuting Attorney

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DECLARATION OF DEPUTY PROSECUTING
ATTORNEY - 2

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

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CASE NUMBER: 13-1-13492-2 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

TARAILLE DUJUAN CHESNEY,

Defendant.

No. 13-1-13492-2 SEA

DECLARATION OF DEPUTY
PROSECUTING ATTORNEY

I, the undersigned, hereby declare that I am 18 years of age, I am competent to testify in a court of law, and I am familiar with the facts contained herein.

- 1. I am a Deputy Prosecuting Attorney with the King County Prosecutor's Office.
- 2. I was the trial attorney in the above captioned case.
- 3. I was contacted by my office's appellate unit on July 29th, 2015 and informed that findings of fact and conclusions of law, pursuant to CrR 3.5 were located in the electronic court record.
- 4. I was also contacted by my office's appellate unit on July 29th, 2015 and informed that findings of fact and conclusions of law, pursuant to CrR 3.6 could not be located in the

DECLARATION OF DEPUTY PROSECUTING
ATTORNEY - 1

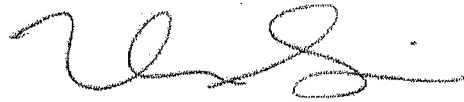
Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

- 1 electronic court record or the original prosecutor's file. I verified that the documents were not
2 included in the electronic court file.
- 3 5. I searched my electronic files and located my originally drafted findings of fact and
4 conclusions of law, pursuant to CrR 3.6.
- 5 6. The originally drafted findings were emailed to the trial judge, the Honorable Timothy
6 Bradshaw and the defendant's trial attorney, Mark Flora, on January 11, 2015 at 11:10 pm. See
7 the original email and attachments as Appendix A.
- 8 7. The defendant was sentenced on January 30, 2015.
- 9 8. I obtained recordings of the pretrial and sentencing hearings. On August 6, 2015, I reviewed
10 the hearings for both days and located the portions relevant to the findings of fact and
11 conclusions of law pursuant to CrR 3.5/3.6.
- 12 9. The sentencing recording accurately reflects that the CrR 3.5 findings of fact and conclusions
13 of law were signed on the record by both parties and the trial judge, the Honorable Timothy
14 Bradshaw at 3:37:30. There is no reference to the CrR 3.6 findings of fact and conclusions of
15 law.
- 16 10. I again presented the originally drafted findings pursuant to CrR 3.6 to Mark Flora, the
17 defendant's trial attorney, on August 17, 2015. We did not discuss the appeal.
- 18 11. Mark Flora signed the findings and conclusions and returned them to me on August 18, 2015.
- 19 12. On August 20, 2015, I provided the findings and conclusions signed by the parties to the trial
20 court.
- 21 13. On August 20, 2015, the trial judge, the Honorable Timothy Bradshaw signed the findings
22 and conclusions pursuant to CrR 3.6, and they were filed with the court.
- 23 14. I have not reviewed any appellate briefing related thereto in the above captioned case.

DECLARATION OF DEPUTY PROSECUTING
ATTORNEY - 2

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

1 Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is
2 true and correct. Signed and dated by me this 9th day of September, 2015, at Seattle,
3 Washington.

4 

5 Michelle Gregoire, WSBA #46467
6 Deputy Prosecuting Attorney

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DECLARATION OF DEPUTY PROSECUTING
ATTORNEY - 3

Daniel T. Satterberg, Prosecuting Attorney
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APPENDIX A

DECLARATION OF DEPUTY PROSECUTING
ATTORNEY - 4

Daniel T. Satterberg, Prosecuting Attorney
Nami Malong Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

Gregoire, Michelle

From: Gregoire, Michelle
Sent: Sunday, January 11, 2015 11:10 PM
To: Flora, Mark; Court, Bradshaw
Subject: RE: Chesney PSR
Attachments: 3.5- Findings & Conclusions (Chesney).pdf; 3.6- Findings & Conclusions (Chesney).pdf

3.5/3.6 Findings and Conclusions attached.

Thank you,
Michelle

From: Flora, Mark
Sent: Sunday, January 11, 2015 3:33 PM
To: Court, Bradshaw; Gregoire, Michelle
Subject: Chesney PSR

Please find attached the Defense Pre-Sentence Report for Taraille Chesney. I was awaiting an evaluation from the DOC that I still do not have. I distribute hard copies. Thank you. Mark Flora

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	No. 13-1-13492-2 SEA
vs.)	
)	
TARAILLE DUJUAN CHESNEY,)	WRITTEN FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW ON CrR 3.5
)	MOTION TO SUPPRESS THE
Defendant.)	DEFENDANT'S STATEMENT(S)
)	
)	

A hearing on the admissibility of the defendant's statement(s) was held on December 2, 2014 before the Honorable Judge Timothy A. Bradshaw .
The court informed the defendant that:

(1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial. After being so advised, the defendant did not testify at the hearing.

After considering the evidence submitted by the parties and hearing argument, to wit:

After considering the evidence submitted by the parties and hearing argument, to wit: testimony

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 1

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Criminal Division
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 296-9000 FAX (206) 296-0953

1 by Seattle Police Department Officer Matthew Didier and Seattle Police Department Officer
2 Donald K. Johnson, and the pretrial exhibits admitted into evidence, the court enters the
3 following findings of fact and conclusions of law as required by CrR 3.5,

4 1. THE UNDISPUTED FACTS:

- 5 a) On November 5, 2013, Ofc. Didier, Johnson, and Diezi were working mountain bike
6 patrol with the Seattle Police Department.
- 7 b) At about 10:47 am, Ofc. Didier, Johnson, and Diezi observed the defendant, Mr. Chesney
8 in Prefontaine Park.
- 9 c) The officers approached the defendant after observing him to be holding a lighter and a
10 clear plastic bag containing a white substance that appeared to be crack cocaine in his left
11 open-face palm.
- 12 d) Ofc. Johnson asked the defendant if that was cocaine in his hand. The defendant
13 responded that it was not cocaine but crushed pills and began to conceal the suspected
14 crack cocaine in his hand.
- 15 e) Ofc. Johnson and Ofc. Didier began to take ahold of the defendant's hands to place him
16 under arrest.
- 17 f) The defendant closed his fist and began to crush the suspected crack cocaine in his hand.
18 Ofc. Johnson recovered the substance from the defendant's hand.
- 19 g) Ofc. Didier advised the defendant of his Constitutional rights using a department issued
20 Miranda card. Ofc. Johnson overheard Ofc. Didier advise the defendant of his rights. The
21 defendant stated that he understood his rights. The defendant did not invoke any of his
22 rights.

23
24 WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 2

Daniel T. Salkenberg, Prosecuting Attorney
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(206) 296-9000 FAX (206) 296-0955

- 1 h) The defendant made several voluntary statements to Ofc. Didier, Johnson, and Diezi after
- 2 arrest.
- 3 i) The defendant stated that the substance was not crack but was crushed Vicodin and
- 4 Seroquil which he snorts. The defendant told the officers to recover the other pills in his
- 5 coat's inner left breast pocket. The defendant stated that he did not sell the pills but that
- 6 he had purchased them from someone on the street. The defendant stated he had a
- 7 prescription for Vicodin and Seroquil.
- 8 j) The Statements made by the defendant after arrest were not part of an interrogation but
- 9 were voluntarily made by the defendant.

10 2. THE DISPUTED FACTS:

- 11 k) Whether the defendant was already under arrest when asking if the suspected substance
- 12 was cocaine by Ofc. Johnson.

13 3. CONCLUSIONS AS TO THE DISPUTED FACTS:

- 14 l) The question by Ofc. Johnson was made as part of a Terry investigation stop.
- 15 m) The defendant was not under arrest when the question was asked and the question was
- 16 not part of an officer interrogation.

17 4. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE DEFENDANT'S STATEMENT(S):

18 a. ADMISSIBLE IN STATE'S CASE-IN-CHIEF

19 The following statement(s) of the defendant is/are admissible in the State's case-
20 in-chief:

- 21 i. The defendant's pre-arrest statement that the substance was not cocaine
- 22 but it was crushed pills is admissible in the State's case in chief as it was
- 23 part of Terry investigation and not interrogation.

24 WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 3

Daniel T. Satterberg, Prosecuting Attorney
Criminal Division
W554 King County Courthouse
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(206) 296-9000 FAX (206) 296-0955

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- ii. The defendant was properly advised of his Constitutional rights. The defendant acknowledged his rights and did not invoke his rights.
- iii. The defendant's post-arrest statements are admissible because they were voluntary and not part of an interrogation.
- iv. The defendant's statements pass Constitutional muster under both the state and federal constitutions and therefore admissible in the State's case in chief.

In addition to the above written findings and conclusions, the court incorporates by reference its oral findings and conclusions.

Signed this ____ day of January, 2015.

JUDGE

Presented by:

Michelle C. Gregoire, WSBA #46467
Deputy Prosecuting Attorney

Mark Flora, WSBA #14026
Attorney for Defendant

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 4

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- 1 d) At about 10:47 am, Ofc. Didier, Johnson, and Diezi observed the defendant, Mr. Chesney
2 in Prefontaine Park.
- 3 e) Ofc. Johnson and Ofc. Didier recognized the defendant from previous contacts, and Ofc.
4 Johnson is on a first name basis with the defendant.
- 5 f) The officers approached the defendant after observing him to be holding a lighter and a
6 clear plastic bag containing a white substance that appeared to be crack cocaine in his left
7 open-face palm.
- 8 g) Ofc. Johnson observed the white substance to be in a clear plastic bag and could see the
9 contents of the bag.
- 10 h) Ofc. Johnson believed the observed substance was clearly cocaine based on his
11 observations and taking into consideration his training and experience.
- 12 i) Ofc. Johnson asked the defendant if that was cocaine in his hand. The defendant
13 responded that it was not cocaine but crushed pills and began to conceal the suspected
14 crack cocaine in his hand.
- 15 j) Ofc. Johnson and Ofc. Didier began to take ahold of the defendant's hands to place him
16 under arrest.
- 17 k) The defendant closed his fist and began to crush the suspected crack cocaine in his hand.
18 Ofc. Johnson believed the defendant was going to destroy the evidence, and recovered
19 the substance from the defendant's hand.
- 20 l) Ofc. Didier and Ofc. Diezi placed the defendant in handcuffs.
- 21 m) The defendant was searched incident to arrest. Numerous pills were located on the
22 defendant as well as a glass pipe and long cooling tube.

23 2. THE DISPUTED FACTS:
24

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 2

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1 n) There are no disputed facts,

2 4. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE
3 SOUGHT TO BE SUPPRESSED:

4 a. PHYSICAL EVIDENCE

5 i. Facts and circumstances sufficient for a reasonably cautious person to
6 believe an offense was being committed. Thus, the officers had probable
7 cause to arrest the defendant.

8 ii. Exigent circumstances justified the seizure of the drugs from the
9 defendant's hand as Ofc. Johnson believed the defendant was going to
10 destroy evidence.

11 iii. The crack cocaine seized from the defendant's hand is admissible in the
12 state's case in chief, and the defense motion to suppress the evidence is
13 denied.

14 In addition to the above written findings and conclusions, the court incorporates by
15 reference its oral findings and conclusions.

16 Signed this ____ day of January, 2015.

17
18 _____
19 JUDGE

20 Presented by:

21 _____
22 Michelle C. Grégoire, WSBA #46467
23 Deputy Prosecuting Attorney

24 _____
Mark Flora, WSBA #14026

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 3

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Attorney for Defendant


WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 4

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, Mary T. Swift, containing a copy of the Brief of Respondent, in STATE V. CHESNEY, Cause No. 73155-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name
Done in Seattle, Washington

09-25-15
Date