

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

NO. 35333-4-II

STATE OF WASHINGTON,

Appellant,

vs.

GREGORY CASAD

Respondent.

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STATE OF WASHINGTON  
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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLALLAM COUNTY  
CAUSE NO. 05-1-00578-4

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**APPELLANT'S OPENING BRIEF**

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## **I. ASSIGNMENT OF ERROR**

The Superior Court of Clallam County ruled in error in suppressing the evidence found on Defendant during a pat down for weapons during the execution of a search warrant for weapons.

## **II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR**

Was the initial seizure and pat down of the Defendant constitutionally reasonable under the circumstances facing officers following a call to dispatch from a concerned citizen, verified visually by responding officers that there was a suspect carrying a firearm through town at about 2:00 p.m. in clear daylight?

## **III. STANDARD OF REVIEW**

The appellate court reviews constitution issues and conclusions of law *de novo*.

## **IV. STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

On Saturday, November 26, 2005, at about 2:00 p.m., PENCOM, the local law enforcement radio dispatch center, received a 911 call from a citizen who reported that she had seen a male walking along the public street carrying what appeared to be a rifle that was partially concealed. (RP 6-7)

The caller, Mary Mason, gave the address as West Eighth Street in the 600 block and gave a description of the suspect, how he was

dressed and his likely location (RP 9-11, ex.1 and 2).

This area of Port Angeles is mostly residential. (RP 13)

Officers from the Port Angeles Police Department responded to the scene. (RP 14)

One of the first to arrive, Officer Arand, indicated that he drove through the general area, seeing nothing at first. (RP 14)

He again drove through, this time westbound, and saw the person fitting the description given by the caller walking eastbound on 8<sup>th</sup> Street. (RP 15)

Officer Arand noted that the individual, whom he did not recognize, was wearing a backpack and carrying what appeared to the officer to be a rifle wrapped in a large towel. (RP 15-16, 32)

Officer Ryan, who also responded, reported that he could see the barrel of a rifle sticking outside the towel, pointing towards the traveled portion of the roadway and that there was heavy traffic at the time. (RP 48-50)

Officer Arand turned and followed the individual until he was approached by Sergeant Roggenbuck who had waited out of sight. (RP 17-18)

The suspect was stopped out of a concern for public safety and the fact that he was carrying what was obviously a firearm in an unusual manner, that is to say, not in a case and immediately available for use (RP 21, 34-35).

Officers approached the person, later identified as Gregory

Casad, with their weapons drawn. (RP 18-19)

Officer Ryan frisked the suspect for officer safety reasons (RP 35, 54).

Upon the command of Sergeant Roggenbuck, the defendant put down the bundle, revealing that he was carrying two rifles (RP 29).

The Sergeant revealed the reason for the contact, at which time Casad mentioned that he was a convicted felon but no longer on probation. (CP 37 *Memorandum Opinion* p.1, 1.25-26, p.2 1.4-8)

The two firearms were placed on Officer Arand's squad car, his backpack was placed on the ground and the defendant was frisked for other weapons. (RP 29-30, 54)

The defendant identified himself and, after Officer Ryan ran a check, it was discovered he was in fact a convicted felon. (CP 37 *Memorandum Opinion* p.1, 1.25-26, p.2 1.4-8)

Casad stated that he was carrying the rifles to a pawn shop and that he felt strange carrying them in the open. He stated that he had no vehicle. (CP 37 - *Memorandum Opinion*, p.2 1.4-8)

Upon suspicion of being in unlawful possession of a firearm, the defendant was taken to the police department, pending further investigation.

Investigation revealed that Casad apparently had not had his civil rights restored and therefore he was arrested for Unlawful Possession of a Firearm.

During a search incident of the backpack Casad had been

carrying at the time officers stopped him, a controlled substance was found, together with drug paraphernalia.

The defendant was charged by information, November 28, 2005, with Possession of a Controlled Substance and two counts of Unlawful Possession of a Firearm in the Second Degree, under RCW 69.50.4013(2) and 9.41.040(2)(a) respectively.

The defendant was arraigned on December 9, 2005, pleading Not Guilty.

On April 19, 2006, counsel for the defense filed a Demand for 3.6 Hearing, to which the State responded on June 13, 2006.

The Court issued a Memorandum Opinion on June 15, 2006, apparently before reading the State's response.

Defendant filed a Supplemental Memorandum on June 21, 2006 (CP 39), to which the State responded on June 30, 2006 (CP 40).

The Court issued its Supplemental Memorandum Opinion (CP 41) on July 11, 2006.

An evidentiary hearing was held August 3, 2006 (CP 50-52). The Court ruled from the bench, suppressing the evidence seized (CP 52). Subsequently, the State dismissed the case on August 25, 2006, as the suppression had the practical effect of terminating the State's case. (CP 55)

The State filed Notice of Appeal on September 12, 2006. Findings of Fact and Conclusions of Law have yet to be filed.

## V. ARGUMENT

### A. Under *Terry v. Ohio* Officers are Entitled to Briefly Detain and Pat Down Suspects When Officers Have a Reasonable Suspicion of Criminal Activity

The State has always conceded that, under Washington law, a detention took place as the defendant was confronted by Sergeant Roggenbuck, with two other officers at the defendant's rear. However, *Terry v. Ohio*, 392 U.S. 1 (1968), entitles officers to briefly detain an individual when they had a specific and articulable suspicion of criminal activity afoot.

The standard to be applied here is not absolute certainty, or even probable cause, but *reasonable suspicion* of criminal activity. Under *Terry*, officers are entitled to investigate a situation that confronts them. It is clear that in this situation, from the initial receipt of the 911 call until officers arrested the defendant on discovering that he was a convicted felon, what took place was done for investigative purposes.

Here there was a call from an alarmed citizen. Though defendant initially suggested it was an anonymous call, thereby seeking to imply a lack of reliability, the caller identified herself, giving clear and concise information to the police dispatcher. The information proved reliable and officers were able to locate the individual.

Officers observed the defendant walking along the street, in the middle of the city, in a predominantly residential area, carrying what was clearly a firearm wrapped in a towel. Commonsense dictates, and officers testified at the suppression hearing, that this is not something

that is seen daily in Port Angeles (RP 21). Given that there had been a citizen report, expressing concern, officers were required to investigate.

RCW 9.41.270(1), *Unlawful Display of a Weapon*, states:

It shall be unlawful for any person to carry, exhibit, display or draw any firearm . . . or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

It is clear that the defendant was carrying the rifles partially concealed, but one officer reported that he could see the barrel of one pointing towards the roadway, i.e. towards the traffic, not the actual road itself (RP 55-56). Another cause for alarm and reason to investigate. In *State v. Spencer*, 75 Wn.App. 118 (1994), the Court held that the phrase, *warrants alarm*, incorporates the reasonable person standard.

In the process of investigating what was going on the defendant volunteered his status as a convicted felon in response to Sergeant Roggenbuck's explanation as to why they were there talking to him. It is noted that the defendant himself suggested that carrying firearms in this manner made him feel strange. He himself seemed aware that his actions were likely to draw attention.

Officers therefore had more than a reasonable suspicion of criminal activity in the form of what could have been a violation of RCW 9.41.270. Under the circumstances of a 911 call from a concerned member of the public informing of what she had seen, verified by a law enforcement officer who drove by the individual, able to see down the

barrel of what clearly was a rifle, it should be clear that officers had the right and duty to investigate. Due to the fact that firearms were clearly involved, officers, with their and public safety in mind, were correct to approach the individual in a circumspect manner. Under Washington law, the careful approach necessitated here involved what amounted to a seizure, but it was justified by the circumstances and clearly was not arbitrary.

**B. Washington Courts Recognize that Law Enforcement Officers Must Take Certain Precautions to Protect Their Safety Under Specified Circumstances**

Testimony was received that, upon stopping the defendant, officers performed a weapons pat-down. Defendant asserted during the suppression hearing that this intrusion was improper. Such is not the case. It is recognized that, under certain circumstances, officers are entitled to take precautions when dealing with a potentially armed or dangerous individual.

Pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), officers may make limited searches for the purpose of protecting their safety during an investigative detention. Under *Terry*, when an officer on the street, observing unusual conduct which, based upon his training and experience, leads him to conclude that criminal activity is afoot and that the person he is dealing with may be armed and dangerous, that officer is entitled to conduct a limited search of that person in order to discover the presence or otherwise of weapons. There is no need for absolute

certainty on the part of the officer that the person in question is armed. The standard to be applied here is whether or not the reasonably prudent individual, under the same circumstances, would be warranted in believing their safety was in jeopardy. *Terry*, 392 U.S. 1, *State v. Harvey*, 41 Wn.App. 870, 707 P.2d 146 (1985).

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. *The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.* And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

*Terry*, 392 U.S. 1, 27. Emphasis added.

The Washington Supreme Court has noted that courts are reluctant to substitute their judgment for that of police officers in the field and that "A founded suspicion is all that is necessary, some basis from which the court can determine that the frisk was not arbitrary or harassing." *State v. Collins*, 121 Wn.2d 168, 847 P.2d 919 (1993). *State v. Belieu*, 112 Wn.2d 587, 773 P.2d 46 (1989).

Cases have made it clear that the discovery of one weapon gives adequate grounds to further pat down a suspect. *State v. Olsson*, 78 Wn.App. 202, 895 P.2d 867 (1995). *State v. Swaite*, 33 Wn.App. 477,

656 P.2d 520 (1982).

The situation in the present case clearly involved one visible weapon, and it turned out there were two. Officers were entirely justified in taking the precautionary measures they did in this instance. Their actions were not arbitrary nor intended to harass and therefore meet constitutional muster.

**C. Washington Courts Recognize That Law Enforcement Has a Community Caretaking Function In the Furtherance of Which, Officers Are Entitled To Make Contact with Citizens**

While the typical community caretaking function, recognized by Washington case law and required under certain statutes, involves assistance proffered to the apparently vulnerable, impaired, or individuals otherwise not apparently able to care for themselves, the situation here under consideration may also fall within the umbrella of community caretaking.

Though a seizure, in the form of a temporary detention, took place at the outset, when officers appeared before the defendant, the motivation for the officers to stop and talk to him came from a 911 call to Dispatch and was based entirely in the need to find out where he was going and why he was carrying a firearm in the middle of the town. It was *community caretaking* in the most obvious sense.

Due to the fact that firearms were involved, in fact two were, the officers were entitled to take temporary control of the weapons and

ensure that the defendant was not further armed. This for officer safety purposes. See *State v. Hall*, 60 Wn.App. 645, 806 P.2d 1246 (1991).

The Washington Supreme Court in *State v. Belieu*, 112 Wn.2d 587, 773 P.2d 46 (1989), in analyzing how much justification officers are required to have in fearing for their own safety when confronting unknown persons [in the context of an emergent investigative stop] held that “courts are reluctant to substitute their judgment for that of police officers in the field. ‘A founded suspicion is all that is necessary, *some basis from which the court can determine the detention was not arbitrary or harassing*’” *Belieu*, at 602, citing *Wilson v. Porter*, 361 F.2d 412, 4115 (9<sup>th</sup> Cir. 1966). Emphasis in original.

Had the defendant not in fact been involved in criminal activity, the contact would most likely have ended, perhaps with the defendant being given a ride to the pawn shop to avoid further disturbance. Such was not to happen however as he revealed his status as a felon. When his status was confirmed and it became clear that he had not apparently had his civil rights restored, then a very different situation confronted officers who took the requisite steps to investigate.

**D. Community Caretaking Has Broader Application Than Has Been Suggested By Defendant**

Contrary to the suggestion in the defendant’s Supplemental Memorandum, filed June 21, 2006, community caretaking incorporates a wider range of activities and interests than simply assisting that of an individual facing some threatening, non-criminal situation. Similarly,

defendant reads too narrowly the holding in *Houser* in stating that the community caretaking function arose in the context of “vehicle accidents in which there is no claim of criminal liability...” *State v. Houser*, 95 Wn.2d 143, (1980).<sup>1</sup> More properly put, the community caretaking function also justifies the actions of law enforcement in such instances.

In *Cady v. Dombrowski*, 413 U.S. 433 (1973), the Supreme Court dealt with a situation in which the underlying interests of the community at large were clearly implicated, but only potentially endangered, when there appeared to be the possibility that a firearm might have been in a damaged vehicle taken to a private garage and thereby possibly available to thieves who might have tried to get into the damaged car, presumably parked in a non-secure location. There was no suggestion that any specific individual’s safety was at risk. Rather the community at large was the concern. “Here the justification . . . was . . . concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle.” *Cady v. Dombrowski*, 413 U.S. 433, 448.

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<sup>1</sup> In the interests of public safety and as part of what the Court has called "community caretaking functions," automobiles are frequently taken into police custody. Vehicle accidents present one such occasion. To permit the uninterrupted flow of traffic and in some circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities. Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge. *South Dakota v. Opperman*, 428 U.S. 364, at 368 (1976).

Community caretaking involves not the investigation of crime, rather it involves the officer's caretaking responsibilities to come to the aid of persons in danger or risk of physical harm. *State v. Kinzy*, 141 Wn.2d 373 (2000). It is clear that this is not the exclusive instance in which officers act under their community caretaking duties.

Washington cases have recognized that community caretaking duties relate to "situations involving not only emergency aid, but also involving a routine check on health and safety." *Kinzy* 141 Wn.2d 373, 388. The *Kinzy* Court went on, "[w]hether an encounter made for non-criminal, non-investigatory purposes is reasonable depends on a balancing of the individual's interest in freedom from police interference against the public's interest in having the police perform a community caretaking function." *Ibid*, citing *Kalmas v. Wagner*, 133 Wn.2d 210, 216-217 (1997).

The *Kinzy* Court contrasted the different standards of analysis for a community caretaking intrusion when the individual is seized and when not seized. Clearly a more stringent analysis is applied in the former case.

In the present case, the defendant was ostensibly seized through the officers' show of authority and drawn weapons. But the analysis does not end there. The reasons the officers were present at all was as a result of a call to Dispatch of an individual carrying what appeared to be a firearm under a towel, walking in a residential area in the middle of the day. The officers had no option but to make contact with the individual

and ascertain who he was, where he was going and why he was carrying a firearm in that manner. The interests of the community were being safeguarded through their action. For the officers to ignore this report would have been dereliction of their clear duty to protect. It is quite likely that had the individual in question not been seen to have been in possession of a dangerous weapon, had the report been of someone acting strangely, that officers could well have approached the person without the need to effectuate what amounted to a seizure. The point being that officers' and the community's safety were implicated when a person carries a weapon in such a manner. Hence the need to approach him as they did. Had there been no obvious firearm then officers would undoubtedly not have approached with weapons at the ready and the analysis of whether or not there had been a seizure would be different.

The Court should not curtail the actions of law enforcement acting upon the report of a concerned citizen and acting properly in dealing with what could well have been a violation of the prohibition against the unlawful carrying of a dangerous weapon. To do so would be to unnecessarily trammel the actions of the police force who were clearly acting in the interests of the community.

**E. *State v. Spencer* Is On Point. The Superior Court's Interpretation Of *Spencer* is in Error**

In *State v. Spencer*, 75 Wn.App. 118, 876 P.2d 939 (1994), the defendant was carrying what appeared to be a military-type rifle over his shoulder with a clip attached. The motorist approached a group of

firefighters who were dealing with a situation, suggesting that they call the police. At about the same time, the motorist encountered a female police officer and told her that he had seen a man walking with a military rifle slung over his shoulder. Some of the firefighters also observed the individual and one stated that he felt the rifle was being carried in a threatening manner. The officer was quoted as saying that the rifle was being carried in “a hostile, assaultive type manner with the weapon ready.” The case does not further elucidate as to the manner of carry.

The officer also noted the clip in the weapon and ordered the individual to put the rifle down and to approach her with his hands in the air. The individual was taken into custody at that time and found to be in legal possession of a concealed handgun.

The defendant was found guilty and appealed, challenging the statute on void for vagueness grounds, that it conflicted with the right to bear arms and that there was insufficient evidence to convict.

The Court found that there was no conflict with the right to bear arms, that the statute was not void for vagueness and that:

[A] person of common intelligence would realize that carrying an assault rifle under such circumstances and in such a manner would warrant alarm in others. Whether different circumstances would warrant alarm is a question that must be left open; here, however, Spencer's conduct falls squarely within the core of the statute. Therefore, we reject Spencer's argument that the statute is unconstitutionally vague.

*State v. Spencer* 75 Wn.App. 118, at 128

There are striking similarities in the facts in *Spencer* and the case under review. The *Spencer* Court, in discussing the purported chilling effect of RCW 9.41.270, pointed out common sense and objective circumstances are to be balanced in evaluating what would warrant alarm in the reasonable person. *Spencer* 75 Wn.App. 124-125.

The Court went on to point out that the circumstances and factors that the,

[O]bjective circumstances [that] would warrant alarm in a reasonable person . . . [n4] . . . may include . . . the fact that the weapon is being carried in a residential neighborhood, the time of day, the urban environment, the manner in which the weapon is carried, the size and type of weapon, and the fact that the weapon has a clip visibly attached.

*Spencer* 75 Wn.App. 124-125.

In the present case the majority of those factors were present. The defendant was seen carrying a rifle, loosely wrapped in a towel, in the middle of the afternoon on a Saturday. He was walking through a mixed residential-business neighborhood, on a busy thoroughfare with heavy traffic. The rifle was being carried across his body, pointing towards the passing traffic. One officer testified that he could, as he passed within twelve feet of the defendant in his squad car, look down the barrel of the rifle. (RP 50, 1.9) This officer also testified that he felt endangered due to that manner in which the firearm was being carried. (RP 53, 1.16, 25). It could not be seen at the time whether or not the rifle had a clip inserted, but that is a minor factor and that part of the weapon was apparently obscured by the loosely wrapped towel.

The Superior Court's analysis focused on the *Spencer* case. In *Spencer* an individual was observed walking his dog while carrying an assault rifle, apparently with clip attached, over his shoulder. He was walking in a residential area at approximately 10 p.m. *Spencer*, at 121.

The *Spencer* Court found that the statute, RCW 9.41.270, comported with the requirements of Washington's *Second Amendment*, and held that the statute does not prohibit weapon ownership *per se*, rather it limits the carrying of weapons to common-sense standards, standards understandable to a person of common intelligence. While not defining a situation in which the displaying of weapons warrants alarm in a reasonable person, the Court pointed out that the circumstances in *Spencer* violated that prohibition. The Court stated that "[T]hese circumstances may include . . . [carrying the weapon] in a residential neighborhood, the time of day, the urban environment, the manner in which the weapon is carried, the size and type of weapon, and the fact that the weapon has a clip visibly attached." *Spencer*, at 124, n4.

The Superior Court held it was proper to contact the defendant, but took issue with the fact that the defendant was detained or seized. The Court posited that the seizure must be premised either on officer safety or public safety concerns, and needs to be something more than merely being in possession of a firearm. Alternatively, valid detention could be based on a *Terry* situation, where there is "*probable cause (sic)* to believe a crime a crime has been committed" (RP 70, 1.21) (Emphasis

added) Of course, the proper *Terry* standard is not probable cause, but reasonable suspicion.

Washington law recognizes the lesser intrusion involved in a *Terry* investigative stop, justified when an officer is able to point to “specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). *State v. Armenta*, 134 Wn.2d 1, 20 P.2d 445 (1997). “The level of articulable suspicion to support an investigative detention is a ‘substantial possibility that criminal conduct has occurred or is about to occur.’ *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). *Probable cause is not required for a Terry stop as such a stop is significantly less intrusive than an arrest. Id.; Brown v. Texas*. 443 U.S. 47, 50, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979)” *State v. Mendez*, 137 Wn.2d 208, 223, 970 P.2d 722 (1999). Emphasis added.

What is at issue in the present case is not whether or not there was probable cause for an arrest nor sufficient evidence for conviction. The issue here is the existence or not of *reasonable suspicion* to warrant a *Terry* Stop. This relatively low threshold, given the wording of RCW 9.41.270, has easily been met.

**F. Officers Did Not Run the Defendant's Criminal History Until He Had Revealed His Status as a Felon. Officers Are Entitled to Temporarily Detain Suspects on a Valid Terry Stop**

Under Washington law, law enforcement officers are entitled to detain an individual for investigative purposes provided certain standards are met.

First and foremost, an officer's detention of an individual for investigative purposes constitutes a seizure under the Fourth Amendment. *State v. Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986). *State v. Armenta*, 134 Wn.2d 1, 948 P.2d 1280 (1997). "The reasonableness of such a detention depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers'. *United States v. Bignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) . . . A seizure is reasonable if the state can point to 'specific and articulable facts giving rise to a reasonable suspicion that the person stopped is, or is about to be engaged in criminal activity.'" *State v. Armenta*, 134 Wn.2d 1, 10, citing *State v. Gleason*, 70 Wn.App. 13, 851 P.2d 731(1993).

Once an officer has reasonable suspicion, based on objective facts, of criminal activity, the officer may stop the individual and ask the detainee for identification and an explanation. Once a valid investigative stop is in progress, officers may detain a suspect for a short period of time, pending the results of a check with Dispatch or headquarters. *State v. Madrigal*, 65 Wn.App. 279, 827 P.2d 1105 (1992).

In the present case, there is no specific evidence as to the length of time the defendant was detained before the radio check returned information confirming his status as a convicted felon. Neither was there explicit reference to the timing of whether or not the officers ran the defendant's status first or whether he told them of his status as a convicted felon and then they ran him.

What is clear here is the fact that the Motion to Suppress (CP 31) and the testimony elicited from both parties did not reference the length of the stop as an issue. While this is not dispositive, it is clear that the length of the stop was not challenged.

However, the Court, in its Memorandum Opinion, filed June 15, 2006 (CP 37), makes specific reference to the defendant himself revealing his convicted felon status before anything was done about running his history. According to the Court's opinion, the facts were not in dispute (CP 37).

It is the State's position that, even had the situation not gone as set out in the various motions, responses and opinions, the facts remain that the defendant was observed, carrying through town on a busy road, at least one firearm in a semi-covered configuration such that the barrel was sticking out and pointing towards the traveled section of the roadway. In other words, in a manner that caused some alarm and appeared to be a potential violation of RCW 9.41.270. It was for this reason and the fact that there was the clear potential for concerns over

public safety that he was approached. Officer Ryan himself, when he drove by the defendant, testified that he felt endangered. (RP 53, 1.16).

There was clear justification for the officers to make a *Terry* stop and under these circumstances the actions of the Port Angeles Police Department were without fault. .

## VI. CONCLUSION

Under the current state of the law as it exists in Washington, officers were entirely justified in approaching the defendant as he was walking alongside the public highway carrying a firearm wrapped in a towel with the barrel protruding and pointing at traffic. The reason officers were on the scene at all was in response to a citizen's complaint, one motivated by concern for the general public. Additionally, the fact that a concerned citizen observed and called in the information, both officers could recognize the fact that the defendant was carrying a firearm, and one of them saw the barrel protruding and pointing at the roadway indicates that there was at least a partial display of a weapon. Certainly enough for officers to investigate under either *Terry* or the community caretaking functions of law enforcement.

In the initial moments of their investigation the defendant apparently brought up the fact that he was a convicted felon. While he believed he was entitled to be in possession of a firearm, he was mistaken in that belief.

The actions of the officers here were entirely reasonable under both Washington and Federal constitutional analyses. This Court should reverse the lower Court's ruling and remand for reconsideration.

DATED this 15th day of December, 2006.

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