

42315-4-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

State of Washington
Appellant

v.

JESUS MIGUEL VILLARREAL
Respondent

42315-4-II

On Appeal from the Cowlitz County Superior Court

Cause No. 10-1-00476-6

The Honorable Michael H. Evans

REPLY BRIEF

Jordan B. McCabe, WSBA # 27211
For Appellant, Jesus M. Villarreal

McCABE LAW OFFICE
P.O. Box 46668, Seattle, WA 98146
206-453-5604 • jordan.mccabe@comcast.net

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II. SUMMARY OF THE CASE¹

Appellant, Jesus Miguel Villarreal, was convicted of possession of methamphetamine in a school zone with intent to deliver. CP 1.

In the early hours of March 25, 2010, Mr. Villarreal and a friend walked a house in Kelso where Villarreal had left his truck after doing some work at the home. Four to six hours earlier the police had carried out a controlled drug buy at the house and were keeping it under surveillance to see if they could apprehend any additional suspects.

Villarreal retrieved his bag from the locked truck, relocked it, and walked away with his friend in the direction of her nearby home.

A police officer stopped Villarreal a couple of blocks away. When he saw the officer approaching, Villarreal put his bag on the ground. The police seized and questioned Villarreal, searched the bag, and found methamphetamine. They arrested Villarreal and charged him with possession with intent to deliver in a school zone.

Villarreal moved to suppress the evidence. The State claimed the police disturbed Mr. Villarreal in his private affairs pursuant to a lawful *Terry*² investigative stop based on Villarreal's recent proximity to the scene of known criminal activity. The arresting officer also claimed he suspected that Villarreal's bag might have been stolen.

¹ Please see Appellant's Brief (AB) pp 2-8.

² *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

The court admitted the evidence, and a jury found Villarreal guilty. He received a standard range sentence plus a nine-year school zone enhancement. CP 46.

Villarreal assigns error to the constitutionality of stopping him and searching his bag. The dispositive question is whether, as the State claims, the surveillance team saw him leaving the drug house, which would arguably justify a *Terry* stop, or whether they merely saw him leaving the vicinity of the house, which would not.

Villarreal also challenges the sufficiency of the evidence that he intended to deliver, and claims the school zone enhancement statute is unconstitutional as applied.

III. ARGUMENTS IN REPLY

1. IN RECAPITULATING THE FACTS, THE STATE MISREPRESENTS THE RECORD.

In an effort to establish critical facts connecting Villarreal to unlawful activity inside the drug house, the State misrepresents the record. Brief of Respondent (BR) at 3-7.

The State claims the Cowlitz-Wahkiakum Narcotics Task Force were joined by the Longview Police Street Crimes Unit, the DEA and the FBI joined in a controlled drug buy involving 88.2 grams of methamphetamine from Victoria Ortega-Barrera and her brother. BR 4,

citing RP 3-4. The State relies on the unfounded claim that a “large controlled buy” of over 88 grams took place as support for the stop and search of Villarreal. BR 9, 10. But RP 3-4 does not specify any amount. The State also asserts that Ortega-Barrera was taken into custody. BR 4, citing RP 5. Again, RP 5 says no such thing.

Rather, Detective Tate testified in a general way about a controlled drug buy, but named no agencies other than the Task Force. Tate did not mention a brother, did not state any quantity of meth or any other details of the buy, and did not say anyone was taken into custody. RP 3-4. Instead, the police simply kept the house under covert surveillance for five or six hours from the time of the buy at 9 or 10 in the evening until two or three in the morning. RP 5, 7. The State says the purpose of this surveillance was to “contain the home.” BR 4, citing RP 5. In fact, Tate’s explanation of the purpose of the surveillance is unintelligible.³ RP 5.

Crucially, the State claims the police observed Villarreal “leave” Ortega-Barrera’s house. BR 4. This is misleading. To say person “left a house” could mean they were inside a dwelling, emerged through a door to the outside, and departed. But the same words can also describe a person first observed in the driveway or on the street in the immediate

³ Please see Appellant’s Brief, at 3, n.2.

vicinity of a residence, who then walked away. The latter is all the police observed here.

Det. Tate admitted that he never saw Villarreal anywhere near the house. His testimony was hearsay. RP 9. Moreover, Tate's informant, Det. Sawyer, also never went near the house. RP 21. All Sawyer could say was that an anonymous officer said that a lone individual, possibly male, had been seen leaving the vicinity of the target premises on foot. RP 13, 22.

The trial court stated on the record that the State had failed to place Villarreal inside the house.⁴ The court stated that Villarreal was "seen leaving the house or driveway, it is not clear which." RP 58. If a trial court does not enter a finding on a disputed fact, this Court presumes the party with the burden of proof failed to sustain its burden. *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

In fact, the record contains no evidence whatsoever connecting Mr. Villarreal with Ms. Ortega-Barrera, other than Villarreal's own testimony that he knew her casually, left his truck in her driveway after doing some work on her car, and returned after midnight with a friend to collect his backpack from the truck. RP 45;

⁴ No written findings were entered as required by CrR 3.6.

The State's claim Tate testified that an unidentified officer saw Villarreal remove a bag from his truck is erroneous. BR 4, citing RP 6. At best, the record shows only that an unidentified person of uncertain gender, possibly male, removed something from a truck. RP 6. The State says Tate directed Sawyer to stop Mr. Villarreal. BR 4, citing RP 6. Tate testified merely that he directed *someone to contact the subject*. RP 6.

The State failed to establish facts supporting a suspicion that Mr. Villarreal was involved in criminal activity.

2. ER 1101(c) DOES NOT EXEMPT
SUPPRESSION PROCEEDINGS FROM
THE RULES OF EVIDENCE.

During a discussion about the admissibility of second-and third-hand hearsay, the suppression court erroneously ruled that the Rules of Evidence did not apply. That is, the trial court believed it could adjudicate Mr. Villarreal's challenge to the violation of his rights under the Fourth Amendment and Wash. Const. art. I, § 7 based on triple hearsay: what Officer Sawyer said Sergeant Tate said some unidentified individual said to him based on we know not what.⁵ This was reversible error.

⁵ No witness testified from personal knowledge, and the trial testimony established that the report that Villarreal was observed entering or leaving the house was false. RP 81-82. The only State's witness claiming to have actually seen Villarreal when he came to collect his bag was DOC Community Corrections Officer Dustin Pratt. RP 80. Pratt would later testify at the trial that he "watched somebody go into a car and leave, and [he] radioed that somebody had taken a bag out of a car and ... walked away from that car." RP 81-82.

Suppression findings must be supported by substantial evidence. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Evidence is substantial if it is sufficient to persuade a rational, fair-minded person of the truth of the finding. *Id.*

Generally, the rules of evidence apply to “all actions and proceedings in the courts of the state of Washington.” ER 1101(a); *State v. Griffin*, 173 Wn.2d 467, 474-75, 268 P.3d 924 (2012). By way of exception, proceedings listed in ER 1101(c) can be held without applying the evidentiary rules. *Id.* But *Griffin* holds that it is the nature of the proceeding, not whether it can be shoe-horned into an ER 1101(c) category that determines whether Due Process subjects the court’s evidentiary rulings to the reliability standard embodied in the Rules of Evidence. Accordingly, the Rules do apply to evidentiary hearings that require a dispositive determination by a fact-finder, irrespective of ER 110(c). *Griffin*, 173 Wn.2d at 475.

At issue in *Griffin*, for example, was a sentencing hearing under RCW 9.94A.537 that required the court as fact-finder to resolve a question of constitutional magnitude. Accordingly, the Rules of Evidence applied, even though the exceptions of ER 1101(c) include “sentencing” proceedings. *Griffin*, 173 Wn.2d at 475.

The rules of evidence in criminal trials are to be governed “by the principles of the common law” and interpreted “in the light of reason and experience.” *McCray v. State of Ill.*, 386 U.S. 300, 309, 87 S. Ct. 1056, 18 L. Ed. 2d 62 (1967). But the Rules of Evidence address solely whether evidence is “relevant, trustworthy, reliable, and not unreasonably prejudicial.” *State v. Bartholomew*, 101 Wn.2d 631, 640-41, 683 P.2d 1079 (1984). Thus, a court need not apply the Rules when determining “questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).” ER 1101(c)(1). Rule 104(a) covers preliminary questions concerning the admissibility of evidence.⁶ The preliminary facts governed by this exception are generally hearsay-related facts upon which the court determines whether offered testimony is or is not hearsay and whether or not it is admissible under a hearsay exception.

In a suppression hearing, by contrast, the reliability of the physical evidence is not at issue. A criminal defendant has a constitutional right to be tried solely upon evidence that was lawfully obtained. *State v. Chenoweth*, 160 Wn.2d 454, 472, n.14, 158 P.3d 595 (2007). Thus the

⁶ ER 104(a): Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b). In making its determination it is not bound by the Rules of Evidence, except those with respect to privileges.

question before the court is whether or not the evidence is tainted by police actions that violate constitutional mandates so that Due Process and the Exclusionary Rule mandate suppression. This is very different from a preliminary fact question upon which to base a hearsay ruling or other evidentiary ruling under ER 104(a).

The State invokes *State v. Fortun-Cebada*, 158 Wn. App. 158, 172, 241 P.3d 800 (2010), in which this Court asserts that United States Supreme Court decisions allow the admission of hearsay at pretrial proceedings “such as a suppression hearing.” *Fortun-Cebada*, 158 Wn. App. at 172, citing *McCray*, 386 U.S. at 311-13. This misconstrues *McCray*.

McCray affirms that federal courts recognize an informer’s privilege. *McCray*, 386 U.S. at 309. But the privilege is confined solely to confidential informants who are not material witnesses to the guilt or innocence of the accused. *McCray*, 386 U.S. at 306. Moreover, *McCray* says nothing about suppression hearings. The anonymous informant’s tip was admissible solely on the issue of reasonable cause to make an arrest or search. *McCray*, 386 U.S. at 306. By contrast, where “the disclosure of an informer’s identity ... is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.” *Id.* at 310 (ellipsis in original), quoting *Roviaro v.*

United States, 353 U.S. 53, 77 S. Ct. 623, 1 L. Ed. 2d 639 (1957). If the Government withholds information helpful to the defense or essential to a fair determination of the cause, the remedy is to dismiss the action. *Id.* In *McCray*, the privilege was properly asserted at a probable cause hearing, while in *Roviaro*, it was erroneously asserted at trial.⁷

The ruling in *Fortun-Cebada* implicitly assumes that all pretrial hearings are the same. But *Griffin* tells us they are not. In a probable cause hearing, for example, the cause may find probable cause based on the testifying officer's reasonable belief, irrespective of the veracity of the informant. Likewise, in ruling on the admissibility of an out-of-court statement, the court merely determines whether the statement is sufficiently reliable to be heard by the jury which ultimately decide whether to believe the statement or not.

In *Griffin*, the court distinguished those sentencing hearings at which the court can dispense with the Rules of Evidence from sentencing hearings at which Due Process guarantees criminal defendants the protection of the Rules. Likewise, not all "preliminary proceedings" at which the Rules are optional are alike. Specifically, an evidentiary hearing to determine whether the State can meet its burden to prove that a

⁷ Likewise, in *Scher v. U.S.*, 305 U.S. 251, 59 S. Ct. 174 (1938), cited by *McCray* for the existence of the informer's privilege, the informer's identity was sought merely to challenge the grounds for the authorities to initiate an investigation that produced independent evidence of guilt. *Scher*, 305 U.S. at 254.

citizen was lawfully seized and searched such that the evidence obtained will not affront the dignity of Washington courts is a *Griffin*-type hearing at which the evidence must meet a standard of reliability for which the Rules of Evidence were created.

Here, the evidence subject to a ruling under Rule 104(a) would be the testimony of Officers Tate and Sawyer. Had defense counsel objected to their testimony as hearsay, the suppression court would not have been constrained by the Rules of Evidence in deciding the facts underlying its ruling on the admissibility of their testimony. But there is a clear distinction between deciding whether a witness is testifying from personal knowledge and whether physical evidence was unlawfully seized. A hearing to determine whether or not the police obtained physical evidence in violation of art. 1, § 7 and the Fourth Amendment such that Due Process requires mandatory suppression under the exclusionary rule is a *Griffin*-type evidentiary proceeding, not a preliminary hearsay-related fact ruling. Just as “sentencing” under ER 1101(c) does not include a *Blakely*⁸ evidentiary hearing, so the category of unspecified “preliminary determinations in criminal cases” does not include suppression proceedings. A suppression hearing requires the court to find that “substantial evidence” supports facts alleged by the State that are

⁸ *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

determinative of the accused's constitutional rights. Therefore, the principle underlying *Griffin* applies.

Moreover, even in an ER 1101(c) proceeding at which the rules of evidence do not apply, Due Process still requires that the outcome be based on reliable evidence. *State v. Williams*, 136 Wn. App. 486, 500, 150 P.3d 111 (2007) (juvenile disposition hearing). Even information relied on by a court in making a preliminary fact ruling must be reliable, even if it is not admissible. *Id.*; *State v. Strauss*, 119 Wn.2d 401, 418-19, 832 P.2d 78 (1992) (sentence must be based on reliable evidence); *State v. Kisor*, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993) (restitution must be based on reliable evidence).

Based on the multiple-degree hearsay presented by the State's witnesses at Villarreal's suppression hearing, no rational, fair-minded person could be persuaded of the reliability of the proposition that Villarreal was ever in the Ortega-Barrera house or that he had any connection with any person or activity inside the home.

The Court should vacate the order denying suppression and reverse the sentence based on evidence the admissibility of which was evaluated under the wrong legal standard.

3. THE POLICE LACKED ARTICULABLE
GROUNDS TO CONDUCT A LAWFUL
TERRY STOP.

Villarreal was seized when Sawyer drove up to him and activated his blue flashing lights. It is well established that activating emergency lights constitutes a seizure. *State v. DeArman*, 54 Wn. App. 621, 624, 774 P.2d 1247 (1989); *State v. Stroud*, 30 Wn. App. 392, 396, 634 P.2d 316 (1981).

The State claims it was sufficient for a lawful *Terry* stop that there was a reasonable probability that criminal conduct had occurred or was about to occur. BR 7, citing *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). This is almost right, but wrong. The officer must have an articulable suspicion that the person to be detained has committed or is about to commit a crime. *Terry*, 392 U.S. at 21; *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009). All Sawyer knew here was that criminal activity had occurred at the Ortega-Barrera house and that Mr. Villarreal was spotted leaving the vicinity of the house at two in the morning. That did not constitute individualized suspicion against Mr. Villarreal or his companion.

A brief stop in the driveway of a house where drugs have been sold hours earlier is insufficient to establish grounds for a *Terry* stop and search: even a visit inside a suspected drug house is insufficient, without

more, to constitute articulable suspicion. *State v. Doughty*, 170 Wn.2d 57, 60, 239 P.3d 573, 574 (2010). Neither does a person’s “mere proximity to others independently suspected of criminal activity” justify a stop.

Doughty, 170 Wn.2d at 62.

Here, it was “not clear” to the suppression court whether Villarreal was seen leaving the house or the driveway. RP 58. In other words, the State failed to meet its burden to place Villarreal inside the house.

Therefore, he was merely in the driveway.

Doughty is dispositive in this case. Doughty engaged in conduct far more questionable than Villarreal’s. He went into a known drug house at 3:20 a.m., stayed two minutes, then returned to his car and drove away.

Doughty, 170 Wn.2d at 60. Doughty’s actions were not sufficient to subject him to a warrantless search and seizure. *Id.* at 62.

The State suggests that removing a bag from a vehicle in the driveway of a house is more incriminating than actually entering the house. BR 9. The State further attempts to distinguish *Doughty*, by suggesting that here, witnesses actually saw what happened when the suspect approached the house. BR 9. As discussed in Issue 1, this is simply false. None of the State’s witnesses actually saw anything. Nor can it be determined from unexamined triple hearsay what the officer who allegedly did see something actually allegedly saw.

Officer Sawyer suggested that an alternative ground to stop and search Mr. Villarreal was a subjective hunch that the bag Villarreal was carrying might have stolen because he set it down at Sawyer's approach. RP 17. Sawyer claimed he activated his blue flashing lights solely in response to Villarreal's setting down the bag.

The State does not perceive this as injecting pretext into the case. BR 12. But the record contains not a whiff of evidence to give rise to any such suspicion before the stop, and the fact that Villarreal put down the bag after he was unlawfully seized cannot justify stopping him in the first place. A valid *Terry* stop must be justified at its inception. *State v. Quezadas-Gomez*, 165 Wn. App. 593, 605-606, 267 P.3d 1036 (2011), citing *Ladson*, 138 Wn.2d at 350, quoting *Terry*, 392 U.S. at 20.

Moreover, it makes no difference whether Villarreal put down his bag before, during, or after being signaled to stop with flashing blue lights. It was undisputed that Sawyer's subjective intent was to stop and search Villarreal as a suspect in the investigation of the Ortega-Barrera house. These were the express instructions Sawyer received from Sergeant Tate. The uncontradicted testimony of both Sawyer and Tate was that the decision to seize and investigate Villarreal had been made at the Kelso police station before Sawyer even got into his uniform. The prosecutor

unambiguously conceded this in closing argument. RP 53. (Villarreal was seized “because of a necessity to the investigation[.]”)

Here, as in *Quezadas-Gomez*, the record contains no facts suggesting that, *at the time of the stop*, the officer had any reason beyond mere conjecture to believe Villarreal was committing a crime.

Generalized suspicion alone is not sufficient to justify the stop. *Quezadas-Gomez*, 165 Wn. App. at 606, citing *State v. Bliss*, 153 Wn. App. 197, 204, 222 P.3d 107 (2009) (“To justify a *Terry* stop under the state and federal constitutions, there must be some suspicion of a particular crime connected to this particular person, rather than a mere generalized suspicion that the person detained may have been up to no good.”)

The State asks the Court to review the erroneous suppression ruling based on evidence subsequently presented at trial. BR 6-7. This is wrong. The suppression ruling must rest solely upon the evidence presented at the suppression hearing. *Hill*, 123 Wn.2d at 647. This is why the rule requires the court to enter written findings and conclusions at the conclusion of the hearing. CrR 3.6. The fact that the court did not do that does not mean the question was unresolved so that evidence presented at the trial can weigh into the decision.

The State also asks the Court to hold that the mere fact that a drug transaction took place at a house justifies rampant speculation that anyone

appearing in the vicinity within the following six hours might be involved in any number of criminal activities. BR 10. But articulable facts supporting individualized suspicion of particular criminal activity by the subject of the stop is the standard. Contrary to the State's claims, there was insufficient nexus linking Villarreal to the controlled drug buy several hours earlier. BR 11.

When the State obtains evidence in a manner that constitutes an unreasonable search or seizure, the evidence is fruit of the poisonous tree. *Wong Sun v. U.S.*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). The sole remedy is to suppress. *Doughty*, 170 Wn.2d at 65. Because the State had no lawfully obtained evidence against Mr. Villarreal, the Court should reverse his conviction and dismiss the prosecution with prejudice. *State v. Stanton*, 68 Wn. App. 855, 867, 845 P.2d 1365 (1993).

4. NO INTERVENING EVENT PURGED THE
TAINT OF VILLARREAL'S CONSENT TO
SEARCH THE BAG.

The trial court believed that Villarreal freely consented to the search of his bag and that his consent defeated the motion to suppress as a matter of law. RP 59. This was error.

The general rule is that consent to a search constitutes one of the recognized exceptions to the warrant requirement. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). However, consent is valid solely where the initial stop was lawful. *Armenta*, 134 Wn.2d at 12-13. Unless some event intervenes between the detention and the search that is sufficient to purge the taint of the unlawful stop, the consent exception does not apply. *State v. Tijerina*, 61 Wn. App. 626, 630, 811 P.2d 241 (1991), citing *Taylor v. Alabama*, 457 U.S. 687, 690, 102 S. Ct. 2664, 73 L. Ed. 2d 314 (1982).

Here, as in *Tijerina*, the police had no lawful grounds to interfere with Mr. Villarreal, and nothing happened between the stop and the search to purge the taint.

The evidence obtained pursuant to the unlawful stop and search must be suppressed.

5. THE SCHOOL ZONE STATUTE IS UNCONSTITUTIONAL AS APPLIED.

The Court should not endorse applying the school zone enhancement statute, RCW 69.50.435(d), to these facts, because to do so invites abuse.

The Court should interpret statutes so as to carry out the intent of the legislature. *State v. Eaton*, 168 Wn.2d 476, 480, 229 P.3d 704 (2010).

The legislature's purpose in enacting RCW 69.50.435(d) was to keep drug dealers away from school children, and to keep drug transactions out of school zones. *State v. Coria*, 120 Wn. 2d 156, 169, 839 P.2d 890 (1992).

Enhancing the penalty based on the location of the stop must make sense under the particular circumstances. *Id.* Here, it does not.

Applying a school zone penalty to drug offenders on a train stopped at a station that was near a school was "overreaching." *U.S. v. Coates*, 739 F. Supp. 146, 153 (S.D.N.Y., 1990), cited in *Coria*, 120 Wn.2d at 165. "To charge a schoolyard count in these circumstances stretches the scope of the statute beyond logical and acceptable bounds." *Coates*, 739 F. Supp. at 153. The school zone enhancement was unconstitutional as applied to the *Coates* defendants because they had obviously merely been passing through the school zone with no intent or ability to endanger children.

The same principle applies to Villarreal. Villarreal did not voluntarily stop in a school zone. He was merely passing through at 2:00 in the morning, when no child was at risk. As applied here, the penalty was doubled not as punishment for actions of the accused, but the arbitrary conduct of the police.

Moreover, where, as here, a citizen is subjected to an arbitrary seizure without the protection of a warrant issued upon probable cause by

a neutral magistrate, there is a danger that police power will be abused. *State v. Young*, 123 Wn.2d 173, 187, 867 P.2d 593 (1994). Allowing the prosecution to increase the penalty by nine years based solely on the arbitrary decision by the police as to where to stop a suspect gives the police unfettered discretion.

That is what happened here. The State doubled the potential penalty merely by arbitrarily postponing an investigative stop until the suspect entered a protected zone. This is not what the Legislature intended. The Court should strike the school zone enhancement.

6. THE PROSECUTOR COMMITTED
REVERSIBLE MISCONDUCT BY
MISLEADING THE JURY AS TO THE
PRESUMPTION OF INNOCENCE.

The State denies that the prosecutor's argument that whatever looks and quacks like a duck must be a duck misleads the jury about the presumption of innocence. BR 26. This is wrong.

The presumption of innocence is the "bedrock upon which the criminal justice system stands." *State v. Bennett*, 161 Wn.2d 303, 315, 165 P.3d 1241 (2007). Comments that erode the presumption of innocence constitute reversible misconduct. *State v. Venegas*, 155 Wn. App. 507, 524, 228 P.3d 813, *review denied*, 170 Wn.2d 1003, 245 P.3d 226 (2010).

Here, the jury could not constitutionally base a guilty verdict upon identifying a couple of characteristics Villarreal shared with a typical offender. Rather the jury needed to find that the State proved every element of the charged crime beyond a reasonable doubt.

Here, Officer Watson described in great detail the characteristics of meth distributors. Then the prosecutor argued that, because Villarreal shared a couple of those characteristics, the jury could presume he was a distributor. Repeating this logical fallacy could only confuse the jury about how to apply the presumption of innocence.

Combined with the prosecutor's implications that Villarreal had failed to show that he did not intend to sell the 30 grams for a huge profit, RP 209; that the quantity alone was proof of intent to sell, RP 210, 230; that an innocent person would have remembered more details about the day of his arrest, RP 224; and that his testimony was inconsistent with Watson's, RP 225, 227, the prosecutor's remarks were likely to mislead a lay person by oversimplifying the concept of the presumption of innocence. The prosecutor intended his argument to obscure the simple fact that the State had failed to produce sufficient evidence to prove beyond a reasonable doubt that Mr. Villarreal intended to sell drugs.

IV. CONCLUSION

The Court should reverse Jesus Villarreal's conviction, vacate the judgment and sentence, and dismiss the prosecution with prejudice.

Respectfully submitted, this March 23, 2012.

Jordan B McCabe

Jordan B. McCabe, WSBA No. 27211

CERTIFICATE OF SERVICE

This Reply Brief was served upon opposing counsel via the Division II upload portal:

Susan I. Baur, sasserm@co.cowlitz.wa.us

A paper copy was deposited in the U.S. mail, first class postage prepaid addressed to:

Jesus. M. Villarreal, DOC # 873110
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Jordan B McCabe, March 23, 2012

Jordan B. McCabe, WSBA No. 27211

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- 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
- Other: _____

Sender Name: Jordan B McCabe - Email: jordan.mccabe@comcast.net

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

sasserm@co.cowlitz.wa.us