

NO. 44789-4-II

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

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STATE OF WASHINGTON, Appellant

v.

BRYAN ANAYA-DEGANTE and WILIBALDO HERRERA-IBARRA.  
Respondents

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-00040-7

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

I. ASSIGNMENTS OF ERROR TO FINDINGS OF FACT  
“DECISION OF THE COURT”<sup>1</sup>

- a. THE TRIAL COURT ERRED IN FAILING TO INCORPORATE IN STATE V. ANAYA-DEGANTE THE “FINDINGS OF FACT AND CONCLUSIONS OF LAW” AND “SUPPLEMENTAL FINDINGS OF FACT” THAT IT ENTERED IN STATE V. HERRERA-IBARRA.
- b. THE TRIAL COURT ERRED IN FINDING THAT “DETECTIVE SGT. MOORE TESTIFIED THAT ANY HISPANIC MALES WHO SHOWED UP AT THE APARTMENT WHILE THEY WERE EXECUTING THE WARRANT WERE GOING TO BE CONSIDERED SUSPICIOUS.” A-D CP 46; H-I CP 63.<sup>2</sup>
- c. THE TRIAL COURT ERRED IN FINDING THAT “THE FACTS CLEARLY DEMONSTRATE THAT THE OFFICERS WERE GOING TO DETAIN ANY HISPANIC MALE WHO ARRIVED AT THE RESIDENCE WHILE THEY WERE EXECUTING THE SEARCH WARRANT.” A-D CP 49; H-I CP 66.

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<sup>1</sup> The trial court’s written “Decision of the Court” applies to both defendants Anaya-Degante and Herrera-Ibarra. The trial court also entered “Findings of Fact and Conclusions of Law” and “Supplemental Findings of Fact” in Herrera-Ibarra’s case. Despite CrR 3.6(b) which requires the court to enter written findings of fact and conclusions of law, the trial court did not enter any findings of fact and conclusions of law in Anaya-Degante’s case. The “Decision of the Court” is the sole evidence of the court’s ruling on the issue. However, as the court’s “Decision of the Court” is comprehensive and allows for review of the suppression rulings, remand for entry of written findings is unnecessary. *See State v. Apodaca*, 67 Wn. App. 736, 839 P.2d 352 (1992); *State v. Smith*, 67 Wn. App. 81, 834 P.2d 26 (1992), *aff’d*, 123 Wn.2d 51, 864 P.2d 1371 (1993).

<sup>2</sup> The clerk’s papers have been separately designated for State v. Bryan Anaya-Degante, Clark County Cause No. 13-1-00040-7 and State v. Wilibaldo Herrera-Ibarra, Clark County Cause No. 13-1-0041-5, though their cases have been consolidated for appeal. The clerk’s papers for State v. Anaya-Degante will be referenced as “A-D CP \_\_\_\_,” and the clerk’s papers for State v. Herrera-Ibarra will be referenced as “H-I CP \_\_\_\_” to attempt to minimize any confusion.

- d. THE TRIAL COURT ERRED IN FINDING THAT “[T]HEY PRE-DETERMINED THAT NO INDIVIDUALIZED SUSPICION OR PROBABLE CAUSE WAS GOING TO BE NEEDED FOR THEM TO DETAIN ANYBODY WHO ARRIVED AT THE RESIDENCE.” A-D CP 50; H-I CP 67.
- e. THE TRIAL COURT ERRED IN FINDING THAT “DETECTIVE LATTER DETAINED THE DEFENDANT TO DETERMINE HIS PURPOSE FOR BEING AT THE APARTMENT AND IMMEDIATELY BEGAN QUESTIONING THE DEFENDANT. THE OFFICERS SEARCHED THE DEFENDANT AND FOUND TWO GLASS PIPES ON HIM THAT THEY IMMEDIATELY IDENTIFIED AS BEING USED FOR SMOKING METHAMPHETAMINE” AS THAT FINDING IS MISLEADING IN ITS OMISSION OF NECESSARY FACTS. A-D CP 45-46; H-I CP 62-63.

II. ASSIGNMENTS OF ERROR TO CONCLUSIONS OF LAW FROM “DECISION OF COURT”

- a. THE TRIAL COURT ERRED IN CONCLUDING THAT *STATE V. BROADNAX*, 98 WN.2D 289, 654 P.2D 96 (1982) IS APPLICABLE LAW TO THE FACTS OF THIS CASE.
- b. THE TRIAL COURT ERRED IN CONCLUDING THAT “THIS ACT BY [ANAYA-DEGANTE], WHILE SUSPICIOUS, DOES NOT JUSTIFY A DETENTION PURSUANT TO *BROADNAX* AND *TERRY*. LIKEWISE, HERRERA-IBARRA’S ACTION BY TURNING AND WALKING DOWN THE STEPS DOES NOT JUSTIFY HIS ARREST OR DETENTION.” A-D CP 50; H-I CP 67.
- c. THE TRIAL COURT ERRED IN CONCLUDING THAT THE FACTS OF THIS CASE ARE COMPARABLE TO THE FACTS IN *STATE V.*

GATEWOOD, 163 WN.2D 534, 182 P.2D 426 (2008).

- d. THE TRIAL COURT ERRED IN SUPPRESSING THE EVIDENCE FOUND ON ANAYA-DEGANTE AND HERRERA-IBARRA.

III. ASSIGNMENTS OF ERROR TO FINDINGS OF FACT ENTERED AS“FINDINGS OF FACT AND CONCLUSIONS OF LAW” IN STATE V. WILIBALDO HERRERA-IBARRA, 13-1-00041-5

- a. THE TRIAL COURT ERRED IN ENTERING FINDING OF FACT 2.
- b. THE TRIAL COURT ERRED IN ENTERING FINDING OF FACT 5
- c. THE TRIAL COURT ERRED IN ENTERING FINDING OF FACT 6.
- d. THE TRIAL COURT ERRED IN ENTERING FINDING OF FACT 7.

IV. ASSIGNMENTS OF ERROR TO CONCLUSIONS OF LAW ENTERED AS“FINDINGS OF FACT AND CONCLUSIONS OF LAW” IN STATE V. WILIBALDO HERRERA-IBARRA, 13-1-00041-5

- a. THE TRIAL COURT ERRED IN ENTERING CONCLUSION OF LAW (B)1.
- b. THE TRIAL COURT ERRED IN ENTERING CONCLUSION OF LAW (B)2.
- c. THE TRIAL COURT ERRED IN ENTERING CONCLUSION OF LAW (B)3.
- d. THE TRIAL COURT ERRED IN ENTERING CONCLUSION OF LAW (B)4.

V. GENERAL ASSIGNMENTS OF ERROR TO BOTH STATE V. ANAYA-DEGANTE AND STATE V. HERRERA-IBARRA

- a. THE TRIAL COURT ERRED IN CONCLUDING THAT THE DETENTION OF ANAYA-DEGANTE WAS UNLAWFUL.
- b. THE TRIAL COURT ERRED IN CONCLUDING THAT THE DETENTION OF HERRERA-IBARRA WAS UNLAWFUL.
- c. THE TRIAL COURT ERRED IN SUPPRESSING THE EVIDENCE FOUND ON ANAYA-DEGANTE'S PERSON.
- d. THE TRIAL COURT ERRED IN SUPPRESSING THE EVIDENCE FOUND ON HERRERA-IBARRA'S PERSON.

VI. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- a. THE OFFICERS HAD REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY TO JUSTIFY THE BRIEF DETENTION OF ANAYA-DEGANTE.
- b. THE OFFICERS HAD REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY TO JUSTIFY THE BRIEF DETENTION OF HERRERA-IBARRA.

B. STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

Bryan Anaya-Degante (hereafter 'Anaya-Degante') was charged by information with Possession of a Controlled Substance-Methamphetamine. A-D CP 1-2. Wilibaldo Herrera-Ibarra (hereafter 'Herrera-Ibarra) was charged by information with Possession of a Controlled Substance with Intent to Deliver Methamphetamine. H-I CP 1-2. Anaya-Degante and Herrera-Ibarra were charged as co-defendants

along with a third co-defendant, Dhena Albert. A-D CP 1-2; H-I CP 1-2. The charges arose from the service of a search warrant on Dhena Albert's apartment. 1 RP at 16-86. The police serving the search warrant had been informed that Albert's suppliers were Hispanic males who were expected to arrive at the apartment during the time of the service of the search warrant. 1 RP at 22, 45, 71. Anaya-Degante is a Hispanic male and he arrived at Albert's apartment while police were there; Herrera-Ibarra was close to Anaya-Degante and behind him on the stairs leading up to Albert's apartment. 1 RP at 25, 60. Both Anaya-Degante and Herrera-Ibarra were detained, and police found differing quantities of methamphetamines on their persons. 1 RP at 49, 66.

Anaya-Degante and Herrera-Ibarra filed motions to suppress evidence, contesting the validity of the search warrants, and contesting the validity of the warrantless arrests and searches of their persons. A-D CP 4; H-I CP 4. The trial court took testimony of three police officers, Detective Shane Hall, Detective Robert Latter, and Sgt. Pat Moore, at the suppression hearing. 1 RP at 16-86. The court issued its written "Decision of the Court" on March 22, 2013.<sup>3</sup> A-D CP 44-51; H-I CP 61-68. Based on

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<sup>3</sup> The trial court's written "Decision of the Court" was filed in all three co-defendants' cases. In *State of Washington v. Wilibaldo Herrera-Ibarra*, 13-1-0041-5, the trial court also filed "Findings of Fact and Conclusions of Law" and signed "State's Supplemental Proposed Findings of Fact and Conclusions of Law for Suppression hearing held on 28 February 2013." H-I CP 71-74; H-I CP 75-76. The trial court did not file any additional Findings of Fact or Conclusions of Law in *State of Washington v. Bryan Anaya-Degante*,

this decision, the State moved to dismiss the cases without prejudice because the practical effect of suppressing the evidence was to terminate the State's case; the trial court granted the motion and dismissed the cases without prejudice on March 28, 2013. A-D CP 52-53; H-I CP 86-87. The State timely filed its notice of appeal on April 19, 2013. A-D CP 43; H-I CP 77.

## II. TESTIMONY AT THE SUPPRESSION HEARING

Detectives Shane Hall and Robert Latter, and Sergeant Pat Moore work in the Clark-Vancouver Regional Drug Task Force. 1 RP at 16, 43, 57. Sgt. Moore is a supervisor and acted as the team leader on the evening of January 2, 2013. 1 RP at 57-58. Police obtained a search warrant to search Dhena Albert's apartment for evidence of dealing in narcotics. 1 RP at 18. The police served the search warrant on January 2, 2013. 1 RP at 17-18. Detectives Hall and Latter and Sgt. Moore, along with three other detectives made up the search warrant service team on January 2, 2013. 1 RP at 19.

Prior to executing the search warrant, the police held a "briefing" wherein information regarding the operation involving the search of Albert's apartment was disseminated to the involved officers. 1 RP at 58. Prior to serving the search warrant, police were had received information

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13-1-0040-7 even though the record is identical in every other way as to both co-defendants.

from a confidential reliable informant that Albert was selling drugs from her apartment in Vancouver, Washington. 1 RP at 18. The police conducted a controlled buy of methamphetamine from Albert prior to obtaining a search warrant using the confidential reliable informant. 1 RP at 18. Detective Hall testified that he obtained a search warrant based on the controlled buy, and information from the confidential reliable informant that s/he had observed a quantity of methamphetamine and other drug paraphernalia at Albert's home. 1 RP at 18. The officers had received information prior to the service of the search warrant from the confidential reliable informant that there was frequent activity to Albert's apartment- that people made frequent visits to the apartment and were there to conduct drug business, either supplying Albert with methamphetamine or purchasing it. 1 RP at 21. The police also observed frequent visits to Albert's apartment during prior surveillance operations. 1 RP at 21, 71. The information that the police had received indicated that Albert's drug suppliers were Hispanic males that frequented her apartment in the evening hours to supply her with methamphetamine. 1 RP at 22, 45, 71. The police had reason to believe the suppliers may be at the apartment during the service of the search warrant during the evening hours of January 2, 2013. 1 RP at 19, 22, 59.

On January 2, 2013 at approximately 7pm, the police arrived at Albert's apartment and found Albert present. 1 RP at 19. No one else was present in her apartment at the time. 1 RP at 19. Albert's apartment is on the second floor of a two story apartment building. 1 RP at 19. The stairs leading up to Albert's apartment lead to two doorways, each doorway the entrance to a separate apartment. 1 RP at 20. Albert's apartment is through the doorway to the right. 1 RP at 20. While the majority of the police officers entered Albert's apartment to conduct the search, Detective Brockus sat in his car in the parking lot and observed the front of Albert's apartment and planned to alert the other detectives to any visitors who approached. 1 RP at 23, 59.

As a result of the search warrant, police found narcotics, cash and other paraphernalia inside Albert's apartment. 1 RP at 62-63. This evidence was found prior to the arrival of Anaya-Degante and Herrera-Ibarra. 1 RP at 62-63

While several detectives were inside Albert's apartment, Detective Brockus radioed to them that two Hispanic males were on their way to Albert's apartment. 1 RP at 59, 74. Near simultaneously with Detective Brockus' radio call, Anaya-Degante knocked on the front door to Albert's apartment. 1 RP at 73, 76. Detectives Hall and Latter, and Sgt. Moore were inside Albert's apartment when Anaya-Degante knocked on the front

door. 1 RP at 24, 45-46, 59. Sgt. Moore opened the door, and Anaya-Degante, a Hispanic male, was at the door. 1 RP at 25, 60. When Detective Hall observed Anaya-Degante at the door, he recognized him from a prior investigation and had information that he was a drug dealer. 1 RP at 25, 31. When Sgt. Moore opened the door, Anaya-Degante threw up his hands, and his eyes got very big. 1 RP at 60. Sgt. Moore was in a police marked uniform, with a tactical vest that clearly stated, "Police." 1 RP at 60-61, 65. Sgt. Moore escorted Anaya-Degante inside and Detective Latter asked him the first question of whether he had any weapons on his person. 1 RP at 25, 48. Anaya-Degante responded that he had a pipe in his pocket. 1 RP at 25, 48. Detective Latter interpreted that to mean pipes used in smoking illegal substances as he is not usually made aware of someone possessing a regular tobacco pipe. 1 RP at 48. Anaya-Degante indicated where he had the pipes at, and Detective Latter felt them through his clothing. 1 RP at 48. Based on their feel, Detective Latter testified that what he felt in Anaya-Degante's pockets felt exactly like 100 percent of the methamphetamine pipes he had ever come across in his experience as a law enforcement officer. 1 RP at 49. Detective Latter placed Anaya-Degante under arrest.<sup>4</sup> 1 RP at 49. Detective Latter recovered two glass

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<sup>4</sup> Anaya-Degante did not challenge the lawfulness of the arrest below. His challenge was limited to the initial detention under *Terry*. The State's appeal is limited to the trial court's ruling that the detectives did not have reasonable, articulable suspicion to initially detain Anaya-Degante and Herrera-Ibarra.

pipes that had methamphetamine residue on them from Anaya-Degante's person. 1 RP at 49. Detective Latter also recovered a small baggie of white crystal substance in one of Anaya-Degante's pockets that field-tested positive for methamphetamine. 1 RP at 49.

Herrera-Ibarra was behind Anaya-Degante on the stairs leading up to Albert's apartment on the second floor of the apartment building. 1 RP at 60. Herrera-Ibarra was approximately two-thirds to three-fourths of the way up the stairs leading to the landing where the doorway to Albert's apartment was located. 1 RP at 60. When Herrera-Ibarra saw Sgt. Moore, he appeared startled and immediately turned around and started walking back down the stairs, from the direction in which he came. 1 RP at 60-61. Sgt. Moore followed Herrera-Ibarra down the stairs, and called out to him, "Hey, hold on, wait, I want to talk to you." 1 RP at 61-63. Herrera-Ibarra ignored Sgt. Moore and continued to walk around the corner and into the parking lot. 1 RP at 63. Once Sgt. Moore caught up with Herrera-Ibarra in the parking lot, Sgt. Moore asked him to show him his hands. 1 RP at 64. Again, Herrera-Ibarra ignored Sgt. Moore and did not show him his hands. A second detective, Detective Lutz, was with Sgt. Moore, and he drew his firearm and stated, "Show me your hands." 1 RP at 64. Herrera-Ibarra complied, showed his hands and Sgt. Moore approached him and grabbed him by the elbow. 1 RP at 64. As soon as Sgt. Moore grabbed Herrera-

Ibarra's elbow, he felt a large object inside his jacket or sweatshirt that felt like a bag that had a crunchy feel to it which Sgt. Moore was 90-95% sure was consistent with methamphetamine. 1 RP at 65. Sgt. Moore has handled methamphetamine thousands of times over his career and is experienced at recognizing methamphetamine. 1 RP at 66. Sgt. Moore asked Herrera-Ibarra, "is that crystal?" and Herrera-Ibarra responded, "yes." 1 RP at 66. Once Herrera-Ibarra responded that it was "crystal," he was placed under arrest. 1 RP at 66. Police recovered a half a pound of methamphetamine from Herrera-Ibarra's jacket. 1 RP at 66.

Once Anaya-Degante and Herrera-Ibarra were identified, police knew who they were and that they were involved in an additional drug investigation that other detectives in the drug task force were working on. 1 RP at 81.

Specifically regarding the knowledge of Hispanic males involved in the drug operation out of Albert's apartment, Sgt. Moore testified to the following:

Q: Sergeant Moore, based upon your training and experience, what are your safety concerns when you're presented with a situation like this, this overall situation?

A: Well, in a drug unit, you know, we execute anywhere from thirty to fifty narcotic search warrants throughout the year; we do several hundred controlled buys throughout the year. I'm not going to say every operation, but a majority of them there is potential firearms involved.

Any time you have large quantities of narcotics, large quantities of cash, there's always a potential of some type of violence or firearms to be present.

We have found firearms in search warrants. We have found firearms inside vehicles. We've found firearms on individuals.

Numerous times in my experience over the last eighteen years, but more specifically in the last three years supervising the drug task force, I mean, we have probably seized or recovered well over a hundred-plus firearms during our—our investigations and search warrants.

So anybody who shows up at a search warrant is gonna be highly suspicious of, you know, 'why are you there? What are your purposes there?'

And again, the information we had ahead of time was we knew this—the particular defendant who was renting the apartment where we had a search warrant for, I mean, we knew who she was assoc—we didn't have particular names, but we knew she was associated with other Hispanic males who frequent her residence, so with all that, we stopped and detained the—the two individuals that arrived.”

1 RP at 66-68.

Regarding the immediate detention of individuals at Albert's door,

Sgt. Moore testified to the following:

A: Based on the totality of the circumstances, the time and the knowledge and the training and experience I had at the time, based on *Terry v. Ohio*, I believed a crime has been committed, was about to be committed, and that's why I detained.

And the mind-set was, I was already going to detain the individual knocking at the door and the individual walking down the stairs. Okay?

I know the facts of the case of *Terry v. Ohio*, and at that time I felt we had articulable, reasonable suspicion and evidence and facts leading up to what to allow me, a police officer, to stop, detain and ID the two individuals that arrived at that apartment.

Q: Because they were Hispanic?

A: Based on the facts that I've already mentioned. If they would have went upstairs and knocked on the door to the left, we probably would have had some issues.

Q: No, I'm asking you is it because they were Hispanic.

A: That's—that's part of the facts. Hispanic males that we know frequent that apartment.

1 RP at 79-81.

C. ARGUMENT

I. THE TRIAL COURT ERRED IN SUPPRESSING THE EVIDENCE FOUND ON ANAYA-DEGANTE AND HERRERA-IBARRA AS THE OFFICERS HAD REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY WHICH JUSTIFIED A BRIEF DETENTION TO INVESTIGATE

The police had reasonable, articulable suspicion that Anaya-Degante and Herrera-Ibarra were engaged or about to engage in criminal activity based on the totality of the circumstances. The trial court's failure to take into account all the pertinent facts, together with its reliance on inapplicable case law, led to an erroneous decision to suppress the

evidence of narcotics and paraphernalia found on the persons of Anaya-Degante and Herrera-Ibarra. Based on the specific facts of this case, and the applicable case law, the police were well within their legal authority to briefly stop and detain Anaya-Degante and Herrera-Ibarra to confirm or dispel their suspicions of criminal activity. Once Anaya-Degante and Herrera-Ibarra were stopped, police almost immediately confirmed their suspicions and developed probable cause to arrest. The subsequent searches of their persons were lawful searches and the evidence should have been admitted. The trial court erred in suppressing the evidence.

This court reviews a trial court's findings of fact following a suppression hearing for substantial evidence. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994); *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Substantial evidence is evidence that is sufficient to persuade a fair-minded, rational person of the truth of the finding. *Hill*, 123 Wn.2d at 644. This court reviews the constitutionality of a warrantless stop de novo. *State v. Rankin*, 151 Wn.2d 689, 694, 92 P.3d 202 (2004). It is the State's burden to prove the lawfulness of a warrantless seizure. *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980) (citing *Arkansas v. Sanders*, 442 U.S. 753, 61 L. Ed. 2d 235, 99 s. Ct. 2586 (1979)).

A seizure for investigative purposes is permissible when a police officer can point to specific and articulable facts which, taken together

with rational inferences from those facts, reasonably warrant the intrusion. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968); *State v. Armenta*, 134 Wn.2d 1, 20, 948 P.2d 1280 (1997). The parties below agree Anaya-Degante was seized upon detectives asking him to step inside Albert's apartment; the parties below agree that Herrera-Ibarra was seized upon detectives telling him to "stop" as he attempted to walk away from the apartment. *See State v. O'Neill*, 148 Wn.2d 564, 577, 62 P.3d 489 (2003) (holding that a police officer commanding a person to stop is a seizure).

A suspect may be seized and subjected to an investigatory detention if police have a "reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a crime." *State v. Duncan*, 146 Wn.2d 166, 172, 43 P.3d 513 (2002). An officer may stop a suspect and ask that person for identification and an explanation of his or her activities if the officer has a well-founded suspicion of criminal activity. *State v. White*, 97 Wn.2d 92, 105, 640 P.2d 1061 (1982). The scope of a *Terry* stop may be enlarged or prolonged as needed to investigate unrelated suspicions that may arise during the stop. *State v. Smith*, 115 Wn.2d 775, 785, 801 P.2d 975 (1990); *State v. Guzman-Cuellar*, 47 Wn. App. 326, 332, 734 P.2d 966 (1987). A court evaluates investigatory detentions under the totality of the

circumstances presented to the investigating police officer. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991) (citing *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L. Ed.2d 621 (1981)). An appellate court reviews the trial court's decision de novo. *State v. McReynolds*, 117 Wn. App. 309, 328, 71 P.3d 663 (2003).

When reviewing a police officer's seizure of an individual for an investigatory reason, the reviewing court should look at the "whole picture" to determine whether the police officer's suspicion of criminal activity was reasonable. *State v. Lee*, 147 Wn. Ap. 912, 917, 199 P.3d 445 (2008), *review denied*, 166 Wn.2d 1016 (2009) (quoting *State v. Randall*, 73 Wn. App. 225, 229, 868 P.2d 207 (1994)). The reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the inception of the stop. Not only should a reviewing court evaluate the totality of the circumstances presented to the investigating officer, but it should also take into account the officer's training and experience when determining the reasonableness of the *Terry* stop, as well as other factors such as the location of the seizure and the conduct of the person detained. *State v. Glover*, 116 Wn.2d at 514. Under this test, an officer may rely on a combination of otherwise innocent observations to briefly stop a suspect. *United States v. Arvizu*, 534 U.S. 266, 277, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002). The investigative

detention must last no longer than is necessary to verify or dispel the officer's suspicion, and the investigative methods employed must be the least intrusive means reasonably available to effectuate the purpose of the detention. *State v. Williams*, 102 Wn.2d 733, 738-40, 689 P.2d 1065 (1984).

Circumstances which appear innocuous to the average person may appear incriminating to a police officer. *State v. Keller-Deen*, 137 Wn. App. 396, 400, 153 P.3d 888 (2007) (citing *State v. Samsel*, 39 Wn. App. 564, 694 P.2d 670 (1985)). In *Samsel*, the court noted, "while an inchoate hunch is insufficient to justify a stop, circumstances which appear innocuous to the average person may appear incriminating to a police officer in light of past experience. That officer is not required to ignore that experience." *Samsel*, 39 Wn. App. at 570-71. The court in *Samsel* also indicated other factors to consider in determining whether the intrusion was reasonable are the purpose of the stop, the amount of physical intrusion and the length of time of the stop. *Id.* at 572 (quoting *State v. Williams*, 102 Wn.2d 733, 740, 689 P.2d 1065 (1984)). Courts have also generally regarded flight in the presence of a police officer to be a circumstance that may be considered along with other factors in determining whether an investigative stop is justified. *State v. Sweet*, 44 Wash. App. 226, 230-31, 721 P.2d 560, *review denied*, 107 Wn.2d 1001

(1986). The reasonableness of a stop is a matter of probability, not a matter of certainty. *State v. Mercer*, 45 Wn. App. 769, 774, 727 P.2d 676 (1986). Further, probable cause is not required for this type of seizure because it is significantly less intrusive than an arrest. *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986); *Brown v. Texas*, 443 U.S. 47, 50, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979). A police officer need not be able to articulate the exact crime which he believes is being committed or about to be committed; police officers are encouraged to investigate suspicious situations. *State v. Villarreal*, 97 Wn. App. 636, 640-41, 984 P.2d 1064 (1999) (citing to *State v. Mercer*, 45 Wn. App. 769, 775, 727 P.2d 676 (1986)).

During an investigatory detention, an officer may ask the suspect a few questions to determine whether a further short intrusion is necessary to dispel his or her suspicion. *State v. Santacruz*, 132 Wn. App. 615, 620, 133 P.3d 484 (2006) (citing to *State v. Gonzales*, 46 Wn. App. 388, 394-95, 731 P.2d 1101 (1986)). As the court noted in *State v. Madrigal*, 65 Wn. App. 279, 827 P.2d 1105 (1992),

When officers have a reasonable suspicion, they may stop the suspect, identify themselves and ask the person detained for identification and an explanation of his or her activities.

*Madrigal*, 65 Wn. App. at 282.

Based on the legal standard for performing a *Terry* detention, the detectives who detained Anaya-Degante and Herrera-Ibarra were within their legal authority to briefly stop and detain the individuals to confirm or dispel their suspicions that they were present at Albert's apartment to deliver drugs or purchase drugs. Under the totality of the circumstances and the facts known to the police, it was reasonable for the police to seize Anaya-Degante and Herrera-Ibarra to ask for an explanation of their activities. *See State v. White, supra* at 105. In applying a reasonableness standard, this Court should look at the "whole picture" known to the police at the time of the detentions. *State v. Lee, supra* at 917. The detectives involved were all specialized, drug task force detectives who had special knowledge, training and experience. 1 RP 16-17, 43-44. 57-58. These detectives were involved in investigating a known drug operation out of Albert's apartment; the detectives were involved in multiple controlled buys of narcotics from Albert; the detectives observed significant traffic to and from Albert's apartment; the confidential reliable informant provided information that Albert's suppliers were Hispanic men who were likely to be at the apartment during the evening while the police were there; and the confidential reliable informant's information was confirmed by the presence of narcotics, cash and drug paraphernalia in Albert's apartment. Based on these circumstances combined with Anaya-

Degante and Herrera-Ibarra heading to Albert's apartment, matching the description of the suppliers who were expected to show up at the apartment, and their startled reactions to police, the detectives were reasonable in suspecting the two co-defendants of being involved in criminal activity. Their subsequent detention of the two co-defendants to investigate was reasonable based on a totality of the circumstances. The trial court's failure to include all necessary facts in its findings and analysis and the trial court's mis-reading of the witnesses' testimony led to findings that were not supported by the evidence and to an improper conclusion that the officers had pre-determined it would stop and detain any individual at the apartment.<sup>5</sup> See A-D CP 46, 49-50; H-I CP 80, 83-84. The police stopped two individuals who fit the description of the drug suppliers who were expected to arrive at the apartment during the time period when they did. All the facts show the police's suspicion of these

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<sup>5</sup> The trial court appears to have analyzed this case under the mistaken impression that Sgt. Moore testified that he would seize any Hispanic person without individualized suspicion due to that person's ethnicity. This conclusion is not supported by the evidence. Sgt. Moore's testimony on this subject is contained in the Statement of the Case above. Sgt. Moore testified that there were a totality of circumstances that gave them cause to detain the co-defendants. The detectives had individualized suspicion for Anaya-Degante and Herrera-Ibarra in part based on their physical appearance only because the suspected drug suppliers who were expected to arrive at the apartment during the service of the search warrant were said to be Hispanic men. That fact coupled with Anaya-Degante and Herrera-Ibarra heading to Albert's apartment at the same time when the suppliers were expected, and their reactions to police gave the police individualized suspicion that these two specific individuals were involved in criminal activity. The police did not engage in racial profiling and did not stop Anaya-Degante and Herrera-Ibarra due to their race, but because they fit the description of suppliers and arrived at a known drug location at a time when the suppliers were expected to arrive.

two individuals was reasonable and based on articulable facts individually applied to Anaya-Degante and Herrera-Ibarra.

The trial court also erred in applying irrelevant case law to its analysis of the lawfulness of the detention. In its decision, the trial court equated the facts of this case to those in *State v. Gatewood*, 163 Wn.2d 534, 182 P.2d 426 (2008). A-D CP 50; H-I CP 67. In *Gatewood*, police drove by a bus shelter and observed the defendant sitting, his eyes growing big as he observed the police. *Gatewood*, 163 Wn.2d at 537. Gatewood turned his body as though trying to hide something. *Id.* The police officers drove around the block and returned to attempt to investigate what Gatewood might be hiding. *Id.* Gatewood was walking away when police returned to the bus shelter. *Id.* at 537-38. They caught up to him and told him to stop and that they wanted to talk to him. *Id.* at 538. Gatewood walked away, and threw something into some bushes. *Id.* The police apprehended him and found a .22 caliber handgun in the bushes and marijuana on Gatewood's person. *Id.* The Supreme Court found that the facts known to the officers at the time they told Gatewood to stop did not amount to reasonable suspicion. *Id.* at 540. In finding the facts insufficient to justify a *Terry* stop in *Gatewood*, the Court relied upon the fact that Gatewood was not in a suspicious place, he did not flee the officers, but was simply observed walking away from the bus shelter,

and appeared surprised to see police, and police could not see what, if anything, he was attempting to hide. *Id.* at 541. The Court concluded that the seizure of Gatewood was to conduct a “speculative criminal investigation.” *Id.* at 542.

By comparison, the detectives involved in this case had far more facts to base their suspicions upon and they did not engage in a “speculative criminal investigation.” The circumstances supporting the detention of Anaya-Degante and Herrera-Ibarra are more similar to those in *State v. Pressley*, 64 Wn. App. 591, 825 P.2d 749 (1992). In *Pressley*, a police officer observed Pressley in a location that is well-known for narcotics transactions and gang activity. *Pressley*, 64 Wn. App. at 593. The police officer had training in narcotics investigations. *Id.* The officer observed Pressley standing near a building beside another female, with their hands held chest high. *Id.* Pressley was pointing to an object in her hand and the other female was intently looking at the object(s) in Pressley’s hand. *Id.* at 593-94. The officer believed he was witnessing a narcotics transaction. *Id.* at 594. The officer drove up to Pressley in a marked patrol vehicle; when Pressley observed the officer she stated, “oh shit” and closed her hand as she and her companion left going in different directions. *Id.* As she walked away, the officer observed Pressley put the object from her hand into her coat pocket. *Id.* The police officer

approached Pressley and asked her what was in her hand, to which she responded nothing. *Id.* The officer directed Pressley to remove her hand from her pocket and told her to give him what was in her hand. *Id.* Pressley handed the officer a clear cellophane wrapper which contained a yellow tissue, which appeared to the officer to be common packaging for rock cocaine. *Id.* The officer squeezed the tissue to feel the contents and felt several hard objects that he believed to be rock cocaine. *Id.* The Court upheld a detention of Pressley as based on sufficient articulable facts to reasonably justify the stop. *Id.* at 597.

Similar to the detention in *Pressley, supra*, the detention of Anaya-Degante was permissible and based on sufficient articulable facts to justify the detention. Prior to Anaya-Degante's arrival at the apartment, police knew that the resident of the apartment, Albert, was a known drug dealer based on controlled buys using a confidential reliable informant, and because the search warrant resulted in discovery of narcotics, cash money and other paraphernalia. The police also knew from the confidential reliable informant, that Albert's drug suppliers were Hispanic men who frequented Albert's apartment in the evening hours, and who were expected to arrive at the apartment that evening. Police themselves had also observed frequent activity with visitors to Albert's apartment.

Once Anaya-Degante arrived at the door, his startled reaction to police presence gave further justification for the police's brief detention. Anaya-Degante immediately opened his eyes wide and threw his hands up in the air at the sight of police. This reaction reasonably raised the officers' suspicions. Sgt. Moore's detention of Anaya-Degante at the time he knocked on Albert's door and had the reaction to police presence was justified based on the facts known to the officers at the time. An investigative detention should last no longer than is necessary to verify or dispel the officer's suspicion and the investigative methods employed must be the least intrusive means reasonably available to effectuate the purpose of the detention. *State v. Williams, supra* at 738-40. However, if during the brief detention, the officer's suspicions are verified, the detention may continue. In the case of Anaya-Degante, the police almost immediately developed probable cause to arrest Anaya-Degante. Once Anaya-Degante was seized, he was asked if he had any weapons. As testified to during the suppression hearing, the officers' training and experience showed them that often drugs and weapons go hand in hand, and the question of whether a detainee had weapons is within reason during the investigatory detention. The police articulated specific facts which led them to believe that the facts of the suspected crime justified assuming the suspects were armed and dangerous. *See State v. Walker*, 66

Wn. App. 622, 631, 834 P.2d 41 (1992). Anaya-Degante's immediate response to that question was that he had pipes. This response gave the officers more facts upon which to continue the detention, asking him where. Once the officer felt the pipes and they felt like 100% of the other methamphetamine pipes he has encountered in his career, he had probable cause to arrest Anaya-Degante. The evidence then subsequently found subject to a search of Anaya-Degante's person incident to arrest should have been properly admitted as the initial detention was lawful, the very brief extension of the detention as supported by additional facts and the arrest was executed immediately upon finding probable cause.

In Herrera-Ibarra's case, the facts of his case are also more similar to those of *Pressley, supra* than of *Gatewood, supra*. Prior to Anaya-Degante knocking on the door, the police were aware of the same facts as stated above- that the resident of the apartment, Albert, was a known drug dealer based on controlled buys using a confidential reliable informant, and because the search warrant resulted in discovery of narcotics, cash money and other paraphernalia, and that Albert's drug suppliers were Hispanic men who frequented Albert's apartment in the evening hours, and who were expected to arrive at the apartment that evening. Herrera-Ibarra also displayed a negative reaction when the police presence was known. It is reasonable to infer that Herrera-Ibarra was with Anaya-

Degante headed to Albert's apartment. Detective Brockus radioed ahead that two Hispanic men were approaching the apartment, and Herrera-Ibarra made no attempt to go to a different apartment, instead, upon seeing the police, he appeared startled, and fled, and did not respond to police's orders to stop. The situation escalated because of Herrera-Ibarra's failure to obey the police officer's orders to stop and only stopped once a firearm was pointed at him. Sgt. Moore's grabbing of Herrera-Ibarra's arm to detain him was a reasonable intrusion given the escalation of the circumstances due to Herrera-Ibarra's failure to comply. The detention of Herrera-Ibarra very quickly confirmed the officers' suspicions as Sgt. Moore felt on Herrera-Ibarra's elbow area what he believed to be crystal methamphetamine. Sgt. Moore asked Herrera-Ibarra if it was "crystal," to which Herrera-Ibarra responded "yes." Once that occurred, Sgt. Moore had probable cause to arrest Herrera-Ibarra for possession of methamphetamine and the subsequent search of Herrera-Ibarra's person was a permissible search incident to arrest.

Here, the circumstances supporting the detention of Anaya-Degante and Herrera-Ibarra are stronger than those found to justify a stop in *State v. Pressley, supra*. As in *Pressley*, the co-defendants are observed in a known drug area- Albert's apartment. As in *Pressley*, the co-defendants both had a startled reaction to police presence, and Herrera-

Ibarra attempted to flee. Further, the police had information from a confidential reliable informant, whose information had been confirmed by the controlled buys and the search warrant execution, that Albert's drug suppliers would be at the apartment during the service of the search warrant. Both co-defendants also matched the description of the known suppliers as they were Hispanic males. Given all the circumstances, the police were justified in their brief detentions of Anaya-Degante and Herrera-Ibarra based on the totality of the circumstances, the officers' training and experience, and the facts known to the officers. These facts clearly give rise to more than an "inarticulable hunch" that these men were engaged in criminal activity or about to be. The trial court's finding that the detentions were unlawful is erroneous.

The trial court further erred in relying upon *State v. Broadnax*, 98 Wn.2d 289, 654 P.2d 96 (1982) in its analysis of the lawfulness of the detentions. The holding in *Broadnax* is inapplicable to the present case. In *Broadnax*, the Court held that a person's "mere presence" at the scene of a search warrant service is insufficient to justify a search of that person. *Broadnax*, 98 Wn.2d at 301. A warrant to search a residence does not also extend to authorize the search of a person found in the residence. *Id.* (citing *Tacoma v. Mundell*, 6 Wn. App. 673, 495 P.2d 682 (1972)). The Court held that there must be some additional circumstance, essentially

“presence plus,” which justifies the intrusion into the non-occupant individual located at the scene of the search warrant execution. *Id.* at 301.

The trial court’s reliance on *Broadnax* is misplaced. *Broadnax* does not impact the *Terry* detention standards or the availability of search incident to arrest based upon probable cause. The court in *Broadnax* essentially only held that a person’s presence in a home during the service of a search warrant (who is not an resident), without more, does not give rise to probable cause to arrest or search the person in connection with the criminal activity going on within the residence. However, the same principles of *Terry* detentions and probable cause arrests apply to persons present during the service of a search warrant. That is what the police in our case did. They developed individualized suspicion based upon significant evidence that Anaya-Degante and Herrera-Ibarra were involved in criminal activity.

Anaya-Degante and Herrera-Ibarra were not “merely present” at the scene of the search warrant execution. In fact, they were not even present when the police first served it. The two co-defendants fit the physical description of known drug suppliers to a known and confirmed drug dealer. The two co-defendants arrived at the known and confirmed drug dealer’s residence at the time their intel told them the suppliers would arrive. Their reactions to police also legitimately raised suspicions. The

facts of our case are not comparable to those of *Broadnax*, and the police did not detain and search Anaya-Degante and Herrera-Ibarra merely because they were present during the service of the search warrant. They detained the defendants because they fit the description of drug suppliers expected to arrive at the apartment and they arrived at the apartment during the expected time frame. The officers searched the defendants because they developed probable cause that those defendants had committed crimes. The officers' detention of Anaya-Degante and Herrera-Ibarra was reasonable given the totality of the circumstances known to the police at the time and their detention was brief and as non-invasive as possible to accomplish the purpose of the detention. The officers' suspicions were very quickly confirmed and they developed probable cause to arrest the co-defendants. The trial court's determination that police acted without individualized suspicion is erroneous. The trial court's suppression of the evidence was not proper based on the facts of the case and applicable case law and it should be reversed.

D. CONCLUSION

The detectives involved in the investigation of the drug operation in Albert's apartment had specific and articulable facts which reasonably warranted detaining Anaya-Degante and Herrera-Ibarra as they matched the description of drug suppliers, and arrived at a known drug house

during the timeframe in which police expected drug suppliers to arrive. Based on the facts of this case and the applicable case law, the police lawfully detained Anaya-Degante and Herrera-Ibarra to confirm or dispel their suspicions that they were involved in criminal activity. The brief detentions were reasonable and warranted given the totality of the circumstances. The trial court's suppression of the evidence found on Anaya-Degante and Herrera-Ibarra should be reversed.

DATED this \_\_\_\_\_ day of August, 2013.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:

\_\_\_\_\_  
RACHAEL R. PROBSTFELD  
WSBA #37878  
Deputy Prosecuting Attorney

# CLARK COUNTY PROSECUTOR

## August 08, 2013 - 4:18 PM

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

STATE OF WASHINGTON,

Plaintiff/Appellant,

v.

BRYAN ANAYA-DEGANTE and  
WILIBALDO HERRERA-IBARRA

Defendant/Respondent.

No. 44789-4-II

Clark County No. 13-1-00040-7

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On August 9th, 2013, I emailed the below-named individuals, containing a copy of the Transcripts to which this Declaration is attached.

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

Date: August 9th, 2013  
Place: Vancouver, Washington

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# CLARK COUNTY PROSECUTOR

## August 09, 2013 - 10:36 AM

### Transmittal Letter

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