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Nº. 50931-8-II

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

STATE OF WASHINGTON
Respondent,

v.

KELLY ALICE PETERS,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Clark County,
Cause No. 16-1-00900-0
The Honorable Suzan Clark, Presiding Judge

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Ms. Peters' motion to suppress all evidence discovered pursuant to her unlawful seizure by Deputy Messman.
2. The Court of Appeals should decline to impose appellate costs, should Respondent substantially prevail and request such costs.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was it error for the trial court to deny Ms. Peters' motion to suppress where Deputy Messman seized Ms. Peters without knowledge of facts sufficient to support an objectively reasonable belief that Ms. Peters was involved in criminal activity? (Assignments of Error No. 1)
2. If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Ms. Peters is indigent, as noted in the Order of Indigency? (Assignment of Error No. 2)

C. STATEMENT OF THE CASE

Factual and Procedural Background

In April of 2016, Kim Fountain was homeless but was staying with her sister, Kelly Peters.¹ Ms. Fountain was using methamphetamine but only used it away from Ms. Peters' residence.² On the night of April 20, 2016, Ms. Fountain went out and borrowed Ms. Peters' long leather coat.³ Ms. Fountain returned to Ms. Peters' apartment and put the coat on the

¹ RP 195, 228-229.

² RP 229.

³ RP 196, 230-231.

back of a chair.⁴

On April 20, 2016, Ms. Peters and Ms. Fountain got in an argument and Ms. Peters told Ms. Fountain to get out of her apartment.⁵ Ms. Fountain responded by yelling insults at Ms. Peters, so Ms. Peters “chested her towards the door” but did not lay hands on Ms. Fountain.⁶ Ms. Fountain swung her purse at Mr. Peters, but Ms. Peters was able to dodge it.⁷ Ms. Fountain then said she needed her shoes which were in the bedroom behind Ms. Peters.⁸ Ms. Fountain turned and tried to get around Ms. Peters but Ms. Peters stepped in front of her so Ms. Fountain tried to turn around to go to the door of the apartment but got tangled up in her own feet and fell, hitting her head on the floor.⁹ Ms. Peters did not push or attack Ms. Fountain.¹⁰

Ms. Peters tried to help Ms. Fountain get up but Ms. Fountain waived Ms. Peters away.¹¹ Ms. Peters told Ms. Fountain to leave, opened the door, and Ms. Fountain exited the apartment after Ms. Peters did.¹² A friend was coming to pick up Ms. Peters so she began walking towards the

⁴ RP 196.

⁵ RP 180, 231-232.

⁶ RP 232-233.

⁷ RP 233.

⁸ RP 233.

⁹ RP 180-181, 233.

¹⁰ RP 180-182.

¹¹ RP 234.

¹² RP 234.

sidewalk.¹³ As Ms. Peters was walking down the stairs, Ms. Fountain called 911.¹⁴

Before Ms. Fountain called 911, an unidentified neighbor had called 911 and reported two women fighting in an adjacent apartment.¹⁵ Clark County Sheriff's Deputy Justin Messman was dispatched in response to the neighbor's call.¹⁶ While he was en route to the apartment, dispatch informed Dep. Messman that a sister of one of the fighting women had called 911 and said her sister had pushed her down and the caller had hit her head.¹⁷ The caller also gave 911 dispatch a description of her sister and said her sister was Kelly Peters and gave Ms. Peters' date of birth.¹⁸

Deputy Messman encountered both women in the parking area of the apartments, walking towards the road.¹⁹ Ms. Peters had the leather coat over her arm and her purse in her hand.²⁰ Dep. Messman immediately ordered both women to get on the ground and demanded their identification.²¹ The women were not free to leave.²² Deputy Messman

¹³ RP 234.

¹⁴ RP 234.

¹⁵ RP 104, 112.

¹⁶ RP 103-104, 164.

¹⁷ RP 104.

¹⁸ RP 105.

¹⁹ RP 105-106, 165.

²⁰ RP 235.

²¹ RP 107, 165-167.

²² RP 111.

ran both women's names and determined that there was an outstanding arrest warrant for Ms. Peters.²³ Dep. Messman ordered Ms. Peters to put her coat and purse on the ground and then arrested her.²⁴

Incident to Ms. Peters' arrest, Deputy Messman searched her purse and the leather coat she had been holding.²⁵ In a pocket of the leather coat Dep. Messman found a small black zipper case that contained a pipe and a substance Dep. Messman believed was methamphetamine.²⁶ Deputy Messman asked Ms. Peters about the methamphetamine and she said it was not hers.²⁷ Ms. Peters had never seen the little zipper case before.²⁸

Clark County Sheriff's Deputy Wayne Phillips²⁹ responded to the apartments to provide backup to Dep. Messman.³⁰ Dep. Phillips spoke with Ms. Fountain and obtained a written statement from her.³¹ However, the written statement was not an accurate description of what happened between the women.³²

The substance found in the black zippered pouch was later tested by the Washington State Patrol crime lab and was determined to weigh

²³ RP 107-109, 166-167.

²⁴ RP 109-111.

²⁵ RP 166-167.

²⁶ RP 167-168.

²⁷ RP 177, 237.

²⁸ RP 237.

²⁹ Subsequent to the events at issue here but before trial, Deputy Phillips was promoted to the rank of Detective. RP 203-204.

³⁰ RP 204.

³¹ RP 192-193, 205-208.

³² RP 194.

four grams and contain methamphetamine, but the concentration of methamphetamine in the substance was not determined and the lab results only indicated that methamphetamine was present somewhere in the substance.³³

On April 25, 2016, the State charged Ms. Peters with unlawful possession of a controlled substance - methamphetamine and domestic violence related assault in the fourth degree.³⁴

Ms. Peters filed a motion to suppress the evidence discovered in her coat on the basis that the warrant for Ms. Peters' arrest was not validly issued and because Ms. Peters was unlawfully seized by Deputy Messman.³⁵ On December 30, 2016, and April 3, 2017, a hearing was held on the suppression motion but the trial court ultimately denied the motion.³⁶

Ms. Peters' trial began on June 19, 2017.³⁷ The jury found Ms. Peters guilty of both charges and did find that the women were part of the same household.³⁸

At sentencing, the State calculated Ms. Peterson's offender score

³³ CP 212-222.

³⁴ CP 3-4.

³⁵ CP 27-40, 72-74.

³⁶ RP 68-132.

³⁷ RP 163.

³⁸ CP 134-136; RP 266.

as two based on two alleged prior convictions in Oregon.³⁹ The State presented no evidence to support its assertion that the prior convictions existed and the trial court conducted no on-the-record analysis of the comparability of the Oregon crimes to Washington crimes.

Notice of Appeal was filed on July 21, 2017.⁴⁰

D. ARGUMENT

1. The trial court erred in denying Ms. Peters' motion to suppress where Deputy Messman seized her without knowledge of acts sufficient to support an objectively reasonable belief that she was involved in criminal conduct.

A. Standard of review.

This Court reviews the trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's findings and whether its findings support its conclusions.⁴¹ Substantial evidence exists only if the evidence in the record would persuade a fair-minded, rational person of the truth of the finding.⁴² This Court reviews the trial court's legal conclusions de novo, including whether its findings of fact support its conclusions of law.⁴³

³⁹ RP 272.

⁴⁰ CP 171.

⁴¹ *State v. Cherry*, 191 Wn. App. 456, 464, 362 P.3d 313 (2015), *review denied*, 185 Wn.2d 1031 (2016).

⁴² *State v. Atchley*, 142 Wn. App. 147, 154, 173 P.3d 323 (2007).

⁴³ *State v. Neeley*, 113 Wn. App. 100, 106, 52 P.3d 539 (2002).

- B. *The seizure of Ms. Peters was unlawful because the facts known to Deputy Messman at the time he seized Ms. Peters were insufficient to support a lawful seizure.*
- i. Ms. Peters was seized when Deputy Messman ordered her to return to him and seized her driver's license.

The Fourth Amendment to the US Constitution provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention, short of a traditional arrest.⁴⁴ A person is “seized” within the meaning of the Fourth Amendment only when, by means of physical force or a show of authority, his freedom of movement is restrained.⁴⁵ There is a “seizure” when, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.⁴⁶

Washington Constitution article I, section 7 states: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” This provision provides

⁴⁴ *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975); *Davis v. Mississippi*, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969).

⁴⁵ *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

⁴⁶ *State v. Mecham*, 186 Wn.2d 128, 137, 380 P.3d 414 (2016) (quoting *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998)).

greater protection than the Fourth Amendment because it focuses on the disturbance of private affairs rather than focusing on unreasonable searches and seizures.⁴⁷

“A seizure under article I, section 7 occurs when, due to an officer’s use of physical force or display of authority, an individual’s freedom of movement is restrained and the individual would not believe that he is free to leave or decline a request.”⁴⁸ “This determination is made by looking objectively at the actions of the law enforcement officer.”⁴⁹

“Not every encounter between an officer and an individual amounts to a seizure.”⁵⁰ An officer who merely asks questions or requests identification does not necessarily elevate a consensual encounter into a seizure.⁵¹ An encounter will not lose its consensual nature unless the police convey that compliance with their requests is required.⁵²

Police actions that likely result in a seizure include the use of language or tone of voice indicating that the compliance with the officer's request might be compelled.⁵³

Whether a reasonable person would believe he was detained

⁴⁷ *State v. Gantt*, 163 Wn.App.133, 138, 257 P.3d 682 (2011), citing *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009).

⁴⁸ *State v. Beito*, 147 Wn.App. 504, 508, 195 P.3d 1023 (2008).

⁴⁹ *Id.* (quoting *State v. Mote*, 129 Wn.App. 276, 282–83, 120 P.3d 596 (2005)).

⁵⁰ *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997) (quoting *State v. Aranguren*, 42 Wn. App. 452, 455, 711 P.2d 1096 (1985)).

⁵¹ *State v. Barnes*, 96 Wn. App. 217, 222, 978 P.2d 1131 (1999).

⁵² *Florida v. Bostick*, 501 U.S. 429, 435, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

⁵³ *State v. Harrington*, 167 Wn.2d 656, 664, 222 P.3d 92 (2009).

depends on the particular, objective facts surrounding the encounter.⁵⁴ A consensual social contact can escalate into a seizure.⁵⁵

In *State v. Thomas*, 91 Wn. App. 195, 200–01, 955 P.2d 420 (1998), the court held that a seizure occurred when an officer, while retaining the defendant's identification, took three steps back to conduct a warrants check on his hand-held radio. The court held, “Once an officer retains the suspect's identification or driver's license and takes it with him to conduct a warrants check, a seizure within the meaning of the Fourth Amendment has occurred.”⁵⁶

Similarly, in *State v. Dudas*, the court determined that a seizure occurred after a deputy took Dudas's identification card and returned to the deputy's patrol car, thus immobilizing Dudas.⁵⁷ And, in *Aranguren*, the court found that a seizure occurred when an officer took the defendants' identification documents to his vehicle to write their names down and run warrant checks on them.⁵⁸

Ms. Peters was seized by Deputy Messman for purposes of both the Fourth Amendment and Article 1, § 7 when Deputy Messman stopped her and ordered her to return as she was trying to walk away. A

⁵⁴ *Armenta*, 134 Wn.2d at 11.

⁵⁵ *Harrington*, 167 Wn.2d at 666.

⁵⁶ *Thomas*, 91 Wn. App. at 200–01.

⁵⁷ 52 Wn. App. 832, 834, 764 P.2d 1012 (1988).

⁵⁸ *Aranguren*, 42 Wn. App. at 456.

reasonable person in Ms. Peters' situation would not have felt free to leave if Deputy's Messman used such language and tone of voice as to compel her to stop walking away from him, turn around, return to him, and then remain seated on the sidewalk.

If this court does not consider the stopping of Ms. Peters to be a seizure, then she was certainly seized when Deputy Messman ordered her to sit on the ground, requested and retained her identification, and then used the identification to check if she had any outstanding warrants.

ii. The seizure of Ms. Peters was unlawful since Deputy Messman lacked knowledge of facts sufficient to support an objectively reasonable belief that Ms. Peters was engaged in criminal activity.

When police officers have a “well-founded suspicion not amounting to probable cause” to arrest, they may nonetheless stop a suspected person, identify themselves, and ask that person for identification and an explanation of his or her activities.⁵⁹ A police officer may stop and detain a person for questioning **if** he reasonably suspects that the person is engaged in criminal activity.⁶⁰

An investigatory detention is a seizure.⁶¹ To support an investigative detention, the circumstances must show there is a substantial

⁵⁹ *State v. Glover*, 116 Wn.2d 509, 513, 806 P.2d 760 (1991).

⁶⁰ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065 (1984).

⁶¹ *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004).

possibility that criminal conduct has occurred or is about to occur.⁶² In Washington, the officer must have a “well founded suspicion, based on objective facts, that the person is connected to potential or actual criminal activity.”⁶³ Such facts are “judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a [person] of reasonable caution in the belief’ that the action taken was appropriate?”⁶⁴ “The available facts must substantiate more than a mere generalized suspicion that the person detained is “up to no good”; the facts must connect the particular person to the particular crime that the officer seeks to investigate.”⁶⁵ The circumstances must be **more consistent with criminal conduct than with innocent behavior.**⁶⁶

To conduct a valid *Terry* stop, an officer must have “reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop.” To evaluate the reasonableness of the officer's suspicion, we look at the totality of the circumstances known to the officer. “The totality of circumstances includes the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty.” **The suspicion must be individualized to the person being stopped.**⁶⁷

⁶² *State v. Mendez*, 137 Wn.2d 208, 223, 970 P.2d 722 (1999), *abrogated on other grounds Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007).

⁶³ *State v. Kennedy*, 107 Wn.2d 1, 7, 726 P.2d 445 (1986).

⁶⁴ *State v. Almanza-Guzman*, 94 Wn.App. 563, 566, 972 P.2d 468 (1999) (quoting *State v. Barber*, 118 Wn.2d 335, 343, 823 P.2d 1068 (1992)).

⁶⁵ *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796, 800 (2015).

⁶⁶ *State v. Pressley*, 64 Wn.App. 591, 596, 825 P.2d 749 (1992).

⁶⁷ *State v. Weyand*, 93377-4, 2017 WL 3138627, at *3 (internal citations omitted) (emphasis added).

A reviewing court decides whether reasonable suspicion existed based on an objective view of the known facts.⁶⁸ The reviewing court does not base its determination of reasonable suspicion upon the officer's subjective belief.⁶⁹

Deputy Messman was aware of no facts that would support an objectively reasonable belief that Ms. Peters was actually or potentially engaged in criminal activity. At most he had a suspicion that there might have been a fight between women in the complex. However, at the time he seized Ms. Peters by retaining her license and conducting a warrant check, Deputy Messman did not know if any criminal conduct had actually occurred.

At most, Deputy Messman was aware of two anonymous telephone calls describing ambiguous conduct and that Ms. Peters matched a description of the alleged perpetrator of the alleged crime. But this is not a sufficient factual basis upon which to base a *Terry* stop:

When an officer bases his or her suspicion [to conduct a *Terry* stop] on an informant's tip, the State must show that the tip bears some "indicia of reliability" under the totality of the circumstances. We require that there either be (1) circumstances establishing the informant's reliability or (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer's information was obtained in a reliable

⁶⁸ *State v. Mitchell*, 80 Wn.App. 143, 147, 906 P.2d 1013 (1995), *review denied* 129 Wn.2d 1019, 919 P.2d 600 (1996).

⁶⁹ *Mitchell*, 80 Wn.App. at 147, 906 P.2d 1013.

fashion. *State v. Sieler*, 95 Wash.2d 43, 47, 621 P.2d 1272 (1980); *State v. Lesnick*, 84 Wash.2d 940, 944, 530 P.2d 243 (1975). These corroborative observations do not need to be of particularly blatant criminal activity, **but they must corroborate more than just innocuous facts, such as an individual's appearance or clothing.**⁷⁰

Here, there were no circumstances that established the informants' reliability and Deputy Messman made no corroborative observations that showed the presence of criminal activity or that the informants' information was obtained in a reliable manner.

The behavior of Ms. Peters observed by Deputy Messman consisted of her walking away from him, an act equally consistent with criminal conduct as with innocent conduct. Nothing observed by Deputy Messman prior to the time he seized Ms. Peters corroborated anything other than innocuous facts, mainly Ms. Peters' appearance. This is an insufficient basis to justify a *Terry* stop on the basis of the uncorroborated telephone calls from two anonymous informants.

At the time that he seized Ms. Peters, the facts known to Deputy Messman did not support an objectively reasonable belief that any criminal activity had occurred, much less that Ms. Peters had been involved in any criminal activity.

⁷⁰ *Z.U.E.*, 183 Wn.2d at 618–19, 352 P.3d 796.

iii. *The seizure of Ms. Peters was unlawful because Deputy Messman exceeded the permissible scope of a Terry stop by checking for warrants.*

As stated above, an officer conducting a *Terry* stop may stop a suspected person, identify themselves, and ask that person for identification and an explanation of his or her activities.⁷¹ However, here, Deputy Messman greatly exceeded these parameters when he ordered Ms. Peters to get on the ground, confiscated her identification card, and only then began investigating the situation by determining if any warrant existed for Ms. Peter's arrest.

The stop and seizure of Ms. Peters was unlawful because Deputy Messman lacked knowledge of facts sufficient to support an objectively reasonable belief that Ms. Peters was involved in any criminal activity and Deputy Messman exceeded the permissible scope of a *Terry* stop seizing Ms. Peters and retaining her ID while he checked for warrants. The trial court abused its discretion in denying Ms. Peters' motion to suppress the evidence found in her jacket.

2. All evidence discovered pursuant to the seizure of Ms. Caulfield should have been suppressed.

When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. *State v. Kennedy*,

⁷¹ *Glover*, 116 Wn.2d 509, 513, 806 P.2d 760.

107 Wn.2d 1, 4, 726 P.2d 445 (1986). Under article I, section 7, suppression is constitutionally required. *State v. White*, 97 Wn.2d 92, 110–12, 640 P.2d 1061 (1982); *State v. Boland*, 115 Wn.2d 571, 582–83, 800 P.2d 1112 (1990). We affirm this rule today, noting our constitutionally mandated exclusionary rule “saves article 1, section 7 from becoming a meaningless promise.” [Citation omitted.] Exclusion provides a remedy for the citizen in question and saves the integrity of the judiciary by not tainting our proceedings by illegally obtained evidence. *State v. Crawley*, 61 Wn.App. 29, 34–35, 808 P.2d 773 (1991).⁷²

As discussed above, Ms. Peters was clearly unlawfully seized by Deputy Messman. Accordingly, all evidence discovered pursuant to the seizure of Ms. Peters, including the methamphetamine found in her coat pocket, should have been suppressed. The trial court erred in denying Ms. Peters’ motion to suppress.

3. If the state substantially prevails, the Court of Appeals should decline to award any appellate costs requested.

At this point in the appellate process, the Court of Appeals has yet to issue a decision terminating review. Neither the state nor the appellant can be characterized as the substantially prevailing party. Nonetheless, the Court of Appeals has indicated that indigent appellants must object in advance to any cost bill that might eventually be filed by the state, should it substantially prevail.⁷³

⁷² *State v. Ladson*, 138 Wn.2d 343, 359-360, 979 P.2d 833 (1999); *see also Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

⁷³ *State v. Sinclair*, 192 Wn.App. 380, 385-394, 367 P.3d 612 (2016) *review denied*, 185 Wn.2d 1034 (2016).

Appellate costs are “indisputably” discretionary in nature.⁷⁴ The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court’s discretionary decisions on appellate costs.⁷⁵ Furthermore, “[t]he future availability of a remission hearing in a trial court cannot displace [the Court of Appeals’] obligation to exercise discretion when properly requested to do so.”⁷⁶

Ms. Peters has been convicted of a felony and sentenced to prison. The trial court determined that she is indigent for purposes of this appeal.⁷⁷ There is no reason to believe that status will change. The *Blazina* court indicated that courts should “seriously question” the ability of a person who meets the GR 34 standard for indigency to pay discretionary legal financial obligations.⁷⁸

If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

E. CONCLUSION

The facts known to Deputy Messman at the time he seized Ms. Peters were insufficient to support a lawful *Terry* seizure. His independent observations corroborated nothing more than innocent details

⁷⁴ *Id.*, at 388.

⁷⁵ *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

⁷⁶ *Sinclair*, 192 Wn. App. at 388.

⁷⁷ CP 177-179.

⁷⁸ *Blazina*, 182 Wn.2d at 839, 344 P.3d 680.

of the anonymous informants' tips, such as Ms. Peters' description. Further, even if the initial *Terry* seizure was lawful, Deputy Messman immediately exceeded the permissible scope of a *Terry* stop by seizing Ms. Peters' identification and using it to check for warrants.

The facts introduced at the suppression hearing did not support the trial court's legal conclusions that the information in the two 911 calls was corroborated, the two calls corroborate each other because they were made close together in time, described the same area, and M. Peters matched the physical description of the person described by one of the callers.⁷⁹

The facts introduced at the suppression hearing also were insufficient to support the trial court's conclusions that Deputy Messman had a reasonable suspicion to detain Ms. Peters and that there was nothing illegal about Deputy Messman retaining Ms. Peters' identification and using it to check for warrants.⁸⁰ Even if the *Terry* seizure is viewed as a lawful seizure, a *Terry* stop is limited in scope and does not include detaining the individual seized for purposes of a warrants check.

In sum, Deputy Messman was not aware of sufficient incriminating facts to conduct an investigative detention of Ms. Peters and, even if the detention was lawful at its inception, it was immediately rendered unlawful when Deputy Messman exceeded the permissible scope of a *Terry* stop.

⁷⁹ CP 207.

⁸⁰ CP 207.

For the reasons stated above, the trial court abused its discretion in denying Ms. Peters' motion to suppress the evidence found during the search of her coat incident to her arrest. This court should vacate Ms. Peters' conviction and remand for a retrial at which all evidence discovered pursuant to her seizure is suppressed.

DATED this 27th day of November, 2017.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Reed Speir", is written above a horizontal line.

Reed Speir, WSBA No. 36270
Attorney for Appellant

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 27th day of November, 2017, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Clark County Prosecutor's Office
1013 Franklin Center
PO Box 5000, Vancouver WA 98666-5000

And to:

Ms. Kelly Peters
1844 NE 104th Loop
Vancouver, WA 98686

Signed at Tacoma, Washington this 27th day of November, 2017.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

November 27, 2017 - 3:52 PM

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