

**FILED**

AUG 05, 2015

Court of Appeals  
Division III  
State of Washington

No. 32443-5-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

CURTIS DONN LIEN,

Appellant.

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BRIEF OF APPELLANT

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## I. ASSIGNMENTS OF ERROR

1. The court erred by denying Mr. Lien's CrR 3.5 motion to suppress statements made to law enforcement.

2. The court erred by entering finding of fact 19, which made it appear that the examination took place after the deputy asked Mr. Lien if the box was his when the examination actually took place before the questioning:

In examining the locking box, the deputy could see, sticking out from the closed door, what looked like a plastic bag and the orange cap of what appeared to be a hypodermic syringe.

2. The court erred by making conclusion of law 1 that the statement by Mr. Lien the box from underneath the driver's seat was his was not subject to suppression.

3. The court erred by making conclusion of law 3 that the deputy was not conducting an interrogation but was conducting an inventory which turned into a brief exchange with Mr. Lien, not related to or incident to a criminal investigation.

4. The search of the box revealing controlled substances was fruit of the poisonous tree from Mr. Lien's statement that should have been suppressed and the convictions for possession

of a controlled substance must be reversed.

*Issue Pertaining to Assignments of Error*

A. When the deputy failed to give Mr. Lien *Miranda* rights after arresting him and then questioning him as to ownership of the box upon observing what he believed to be a controlled substance, did the court err by denying the CrR 3.5 motion when the deputy's question was intended to elicit incriminating evidence?

II. STATEMENT OF THE CASE

Mr. Lien was charged by information with count I: possession of a controlled substance (methamphetamine) with intent to deliver; count II: possession of a controlled substance (cocaine); count III: possession of a controlled substance (hydrocodone); and count IV: possession of a controlled substance (amphetamine). (CP 1, 207). His CrR 3.6 motion to suppress evidence, *i.e.*, the box in which the controlled substances were found, was denied. (CP 71).

Just before trial, the court denied Mr. Lien's CrR 3.5 motion to suppress statements he made to law enforcement. (CP 199).

The court entered these findings of fact:

1. Deputy T. Edelbrock, on routine patrol on May

31, 2012, observed a pickup truck parked on the wrong side of the road in the vicinity of 5400 East Valley Springs Road.

2. The vehicle had a warm engine and given the remoteness of the area and law enforcement problems he was aware of, the deputy ran the license plate, finding a warrant and a suspended driver's license in the registered owner's name.

3. Requesting assistance from Deputy Sutter, the two officers positioned themselves at either direction, but out of sight from the truck, intending to stop it when it left the area.

4. Deputy Sutter made first contact as the truck drove past her, and summoned Deputy Edelbrock.

5. Approaching the driver, Curtis Lien, who was not the registered owner of the truck, Deputy Edelbrock observed numerous knives in the vehicle, including a very long one over the visor on the driver's side.

6. Mr. Lien had only a Washington identification card immediately advised the deputy that he did not have a driver's license, and was handcuffed.

7. A radio check showed Mr. Lien to have a suspended driver's license and a felony hold warrant from the Department of Corrections.

8. There was a female passenger in the car, Ms. Brittany Salsbury, who also did not have a driver's license and was suspended.

9. The deputy advised Mr. Lien that he would be cited only for the suspended license but would be booked into jail for the Department of Corrections hold.

10. Several attempts to contact the registered owner by telephone were unsuccessful.
11. Since neither person was registered owner, and Ms. Salsbury did not have a license, Deputy Edelbrock decided the truck would have to be impounded for safekeeping and began to inventory the contents.
12. A purse was released to Ms. Salsbury.
13. Mr. Lien asked the deputy if his leather jacket could also be released to the female.
14. The deputy took the jacket out of the truck to hand it to Ms. Salsbury and noticed that it was extremely heavy.
15. Out of concern for his safety, the deputy removed the items from the pockets, which turned out to be numerous old coins, which were taken to the police property room for safekeeping.
16. The deputy could see a rectangular object protruding from underneath the driver's seat in the truck, which appeared to be a book.
17. The deputy asked Mr. Lien who the item belonged to, to which Mr. Lien responded "it's mine," and declined giving consent to look in the box.
18. The book, also very heavy, turned out to be a locking metal box with a cover that made it look like a book.
19. In examining the locking box, the deputy could see, sticking out from the closed door,

what looked like a plastic bag and the orange cap of what appeared to be a hypodermic syringe.

20. The box was not opened but was taken to the police property room, pending the application and eventual granting of a search warrant.

21. In the execution of the search warrant, contraband was discovered which led to the charges filed in this case. (CP 199-201).

From those findings, the court made these conclusions of

law:

1. The statement elicited from Mr. Lien was not subject to suppression.
2. The conversation had been initiated by Mr. Lien regarding the disposition of his coat, out of concern that it not be left in the truck after the impound.
3. Deputy Edelbrock was not conducting an interrogation but was conducting an inventory which turned into a brief exchange with Mr. Lien, not related to or incident to a criminal investigation. (CP 201).

Mr. Lien was convicted of counts II, III, and IV. (CP 163-65).

There was a hung jury on count I, but he subsequently entered into

a plea agreement where he pleaded guilty to possession of a controlled substance (methamphetamine) with intent to deliver.

(CP 208). The court imposed a 60-month sentence on count I and

concurrent sentences of 12+ months on each possession charge. (CP 330). This appeal follows.

### III. ARGUMENT

A. The court erred by denying Mr. Lien's CrR 3.5 motion to suppress statements made to law enforcement.

The court made no finding that Mr. Lien was given his *Miranda* rights by Deputy Edelbrock. At the suppression hearing, the deputy testified that right after running Mr. Lien's name through radio, he arrested him. (2/19/14 RP 20). All he told Mr. Lien was he had the right to an attorney and if he could not afford one, "we'd provide one for him." (*Id.*). After dealing with the coat, Deputy Edelbrock continued to inventory the truck, and noticed what "looked like a book at first glance under the driver's seat from the side." (*Id.* at 22). He was still outside the vehicle, but could see the box. (*Id.* at 23). The deputy then "reached in and pulled it out from under the seat" and examined it while opening it like a book:

Holding it up in a book reading position at the bottom with the shift – I could see a bag and a syringe underneath the hinge – the side edge of the door. (*Id.* at 24).

After discovering the nature of the object of the box, Deputy

Edelbrock testified he did the following:

After I saw a portion of a syringe in the back with the powder in it, I just closed it. (*Id.* at 26).

Not knowing exactly what to do with the box, he just held on to it. He “ended up asking Curtis whose it was,” but did not say anything to anyone about what he had seen. (*Id.* at 26). Deputy Edelbrock confirmed to the prosecutor that he asked Mr. Lien whose it was, whereupon he said it was his. (*Id.* at 27).

The sequence of events is undisputed. The deputy saw the box; observed a baggie, white powder, and a syringe sticking out of the box. Only after seeing what looked like contraband did Deputy Edelbrock ask Mr. Lien whose box it was. Finding of fact 19 indicates the box was examined after the deputy asked Mr. Lien who it belonged to. (See finding of fact 17, CP 201). This crucial finding is contrary to the undisputed facts, is unsupported by substantial evidence, and cannot stand. *State v. Broadaway*, 133 Wn.2d 118, 129, 942 P.2d 363 (1997). Likewise, the conclusions do not flow from the findings. *Id.*

The best that can be said for Deputy Edelbrock in giving the advice of rights, if it can be called that, is he gave an incomplete

*Miranda* warning. But *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.

Ct. 1602, 16 L. Ed.2d 794 (1966), requires more than advising Mr.

Lien of his right to an attorney:

Prior to any questioning the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive these rights, provided the waiver is made voluntarily, knowingly and intelligently.

*State v. Erho*, 77 Wn.2d 553, 463 P.2d 779 (1970), is dispositive and requires reversal. Deputy Edelbrock admitted he did not give complete *Miranda* warnings to Mr. Lien, who was without a doubt under arrest and interrogated by asking an incriminating question after the deputy observed contraband sticking out of the box. Mr. Lien was not advised of his right to remain silent and was not told that anything said could and would be used against him in court. *Miranda* requires that the right to remain silent be told to a defendant “in order to make him aware not only of the privilege, but also of the consequences of foregoing it.” 384 U.S. at 469. Indeed, “[i]t is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege.” *Id.*

Just as in *Erho*, the warnings, which the deputy himself testified to giving Mr. Lien, were inadequate as he was not advised of his right to remain silent or that anything he said could be used against him. 77 Wn.2d at 783. And, like in *Erho*, the deputy questioned him about the box to elicit an incriminating statement, *i.e.*, the box was his. This was an interrogation, albeit brief, in order to obtain the admission that Mr. Lien owned the box. But without adequate and complete *Miranda* warnings, there can be no voluntary, knowing, and intelligent waiver of his rights. *Erho*, 77 Wn.2d at 783. Indeed, without such warnings, it is presumed the confession is involuntary. *State v. Godsey*, 131 Wn. App. 278, 284-85, 127 P.3d 11, *review denied*, 158 Wn.2d 1022 (2006). The court erred by denying Mr. Lien's CrR 3.5 motion to suppress.

Furthermore, evidence derived from the illegally-obtained statement must be suppressed under the fruit of the poisonous tree doctrine. *See State v. O'Bremski*, 70 Wn.2d 425, 428, 423 P.2d 530 (1967) (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed.2d 441 (1963)). There was no evidence tying Mr. Lien to the box and the contraband in it except for his incriminating statement that the box was his. The State acknowledged as much

in closing:

[The defense] says that the State has provided no evidence that the items were in the defendant's possession. Well, let's go back to the arrest when Deputy Edelbrock had Mr. Lien in handcuffs and was going to inventory the truck again to protect the defendant and to protect the property belonging – that was in the truck, whoever it belonged to.

He said he opened the car door on the driver side and he could see the box. Remember I asked him how far was it sticking out, and he said I can't recall, but I could see the edge of it. It was there to be seen.

Secondly, and probably more importantly, the defendant said that's mine. Evidence wise, you don't need much more than his admission that's mine. Deputy Edelbrock said who does this belong to? They already had the suggestion about the coat, and the defendant said that's mine. That's all you need. That's all you need. (2/20/14 RP 188-89).

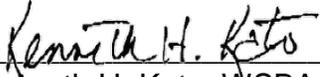
The State made its case with Mr. Lien's illegally obtained statement after the deputy gave inadequate *Miranda* warnings. In these circumstances, the admission of his statement had a reasonable probability of affecting the jury's verdict and was not harmless error, thus requiring reversal. *Godsey*, 131 Wn. App. at 286. All evidence derived from the statement must also be suppressed as fruit of the poisonous tree. *O'Bremski, supra*. The charges must

be dismissed.

#### IV. CONCLUSION

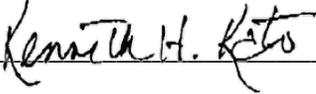
Based on the foregoing facts and authorities, Mr. Lien respectfully urges this court to reverse his convictions for possession of a controlled substance and dismiss the charges.

DATED this 5<sup>th</sup> day of August, 2015.

  
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#### CERTIFICATE OF SERVICE

I certify that on August 5, 2015, I served a copy of the Brief of Appellant by first class mail, postage prepaid, on Curtis Lien, # 801331, PO Box 769, Connell, WA 99326; and by email, as agreed, on Brian O'Brien at SCPAappeals@spokanecounty.org.

  
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