

**FILED**  
**Mar 15, 2016**  
Court of Appeals  
Division III  
State of Washington

**NO. 33698-1-III**  
**COURT OF APPEALS**  
**STATE OF WASHINGTON**  
**DIVISION III**

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**TIMOTHY HARLAN LEONARD,**

Defendant/Appellant.

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**REPLY BRIEF OF APPELLANT,**

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## ARGUMENT

The State, in its brief, does not address the small container argument raised by Mr. Leonard. Mr. Leonard contends that the State necessarily has to concede that issue and that his conviction should be reversed.

Insofar as the private search doctrine is concerned it appears that Mr. Leonard and the State disagree as to the import of *State v. Eisfeldt*, 163 Wn.2d 628, 185 P.2d 580 (2008).

Mr. Leonard asserts that the difference of opinion arises from the trial courts findings and fact in connection with the suppression hearing and the bench trial. The State argues that the findings of fact are verities on appeal and that Mr. Leonard did not challenge them.

Mr. Leonard contends otherwise. He raised the issue that the trial court's findings of fact concerning security officer Jack Hastings are inconsistent. Those findings of fact consist of the following:

Hastings said he searched Leonard and found a round Jack Links jerky container (similar to a chewing tobacco container) in his back left pant pocket. Hastings asked Leonard what was inside the container and

Leonard admitted to it being heroin. (CP 107)

I [Hastings] removed the plastic container from his left back pocket. I looked inside of the container and saw two small plastic bags and a small piece of aluminum foil. (CP 110)

Officer D. Storch can testify to:

-Looking inside the Jack Links jerky container and finding a small zip top baggie with a brown tar-like substance. (CP 105)

Mr. Hastings located a jerky container with two small plastic bags, and a small piece of aluminum foil in Mr. Leonard's left back pocket. (Finding of Fact 8- CP114)

When law enforcement arrived and arrested Mr. Leonard for the active warrant(s), they searched Mr. Leonard's belongings incident to a lawful arrest. The officers found a bagging [*Sic.*] containing a brown

tar-like substance and field tested it. (Finding of Fact 10- CP 114)

Mr. Leonard was detained by Mr. Hastings. He was handcuffed. He was searched.

In *State v. Eisfeldt*, a repairman was authorized to enter a residence. He went into an attached garage and opened up a garbage bag where he found marijuana. He contacted law enforcement and advised them of what he had found. Law enforcement officers arrived, went into the garage and made the same observations as the repairman. They did not secure a warrant before doing so.

The State relies upon fn.3 at 635 of the *Eisfeldt* case. It states:

Eisfeldt does not claim Piper's search of the Lacey house was unconstitutional. Article I section 7 and Fourth Amendment protections apply only to searches by state actors, not the searches by private individuals. *See Burdeau v. McDowell*, 256 U.S. 465, 475, 41 S. Ct. 574, 65 L. Ed. 1048 (1921); *State v. Carter*, 151 Wn.2d 118, 124, 85 P.3d 887 (2004). Piper had no relationship with any police officer and was not encouraged by the State to search the house. Since Piper was a private actor when he searched the house, *Eisfeldt's* constitutional protections are not implicated.

On the other hand, Mr. Leonard contends that the facts and circumstances in his case parallel those facts and circumstances in *Eisfeldt* at 638, fn.9:

The concurrence suggests citizens do not “retain a privacy interest in evidence of a crime obtained by a private actor and delivered to the police.” Concurrence at 643. This is correct where the evidence obtained during a private search is given to the State; constitution protections do not apply to private actors. *See State v. Walter*, 66 Wn. App. 862, 833 P.2d 440 (1992). But here the evidence obtained during the private search consisted entirely of Piper’s observations. The private search is not at issue here, but instead whether the private search doctrine allows the State to conduct a subsequent warrantless search. As such, the concurrence’s analysis is misplaced insofar as it compares evidence obtained by a private actor to evidence obtained by the State.

Mr. Leonard otherwise relies upon the argument contained in his original brief.

Dated this 15th day of March, 2016.

Respectfully submitted,

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**NO. 33698-3-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	SPOKANE COUNTY
Plaintiff,	)	NO. 14 1 03026 7
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF</b>
	)	<b>SERVICE</b>
	)	
TIMOTHY HARLAN LEONARD,	)	
	)	
Defendant,	)	
Appellant.	)	
	)	

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I certify under penalty of perjury under the laws of the State of Washington that on this 15th day of March, 2016, I caused a true and corrected copy of *Reply Brief of Appellant* to be served on:

COURT OF APPEALS, DIVISION III  
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