

**FILED**

OCT 23 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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

NO. 351106-III

STATE OF WASHINGTON,  
Respondent,

vs.

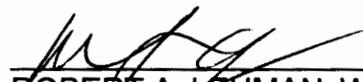
ROBERT SALINAS,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR ADAMS COUNTY  
CAUSE NO. 16-1-00163-7

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**BRIEF OF RESPONDENT**

  
\_\_\_\_\_  
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## I. RESPONSE TO ASSIGNMENTS OF ERROR

The Trial Court was correct in denying the Appellant's CrR 3.6 Motion to Suppress Evidence.

## II. ISSUES PRESENTED

1. Whether the Appellant was lawfully seized while as a passenger in the vehicle.
2. Whether the Trial Court did not rely on the inevitable discovery doctrine in reaching its conclusion.
3. Whether the Trial Court did not rely on the attenuation doctrine in reaching its conclusion.

## III. STATEMENT OF THE CASE

### A. Facts Surrounding Arrest

On December 10, 2016, at approximately 0020 hours, Officer Martinez of the Othello Police Department, was on patrol and observed a vehicle traveling at a high rate of speed. CP 39<sup>1</sup>. The vehicle abruptly turned left and then slid on the roadway, blocking the lane of travel. *Id.* Officer Martinez activated his emergency lights and then stopped the vehicle for the traffic infraction. *Id.* It was dark, snowing and bitterly cold that night. *Id.*

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<sup>1</sup> The Facts Surrounding Arrest are primarily derived from Othello Police Officer Eduardo Martinez, stipulated by the Appellant in his Statement of Defendant Regarding Bench Trial and attached to same.

Officer Martinez did not recognize the driver or the passenger, but observed that the passenger was wearing gang affiliated clothing. *Id.* He advised the driver the reason of the stop and explained they were being recorded. *Id.* The driver acknowledged the reason for the stop and told the officer that he did not have any form of identification or proof of insurance. *Id.* He verbally identified himself as Ricky D. Ramirez and provided a date of birth of November 27, 1996. *Id.* He added that his license might be suspended. *Id.* Ramirez gave conflicting stories as to why they were in Othello, where they were going and where they came from. *Id.*

While Officer Martinez was speaking with Ramirez, he smelled the odor marijuana coming from inside the car. *Id.* Officer Martinez asked Ramirez how old he was and he replied 20 years old. *Id.* He also asked him how much marijuana he had in the vehicle. *Id.* Ramirez told him "a little bit" and pointed to a glass jar in the back seat. *Id.* In addition to smelling the marijuana, Officer Martinez also observed a glass smoking device in the center of the seat between Ramirez and the front passenger. *Id.* He then asked Ramirez if he had anymore marijuana in the car. *Id.* The passenger replied that he had marijuana but that he was 22 years old. *Id.* The passenger also held up a bag of marijuana for Officer Martinez to

see. Id. In observing the passenger, Officer Martinez believed he looked to be younger than the driver and therefore under the age of 21. Id. Upon learning that the passenger also had marijuana, Officer Martinez asked him if he could see his identification. Id. The passenger identified himself as Robert J. G. Salinas, the Appellant, and handed his identification to Ramirez, who held it while the officer wrote down the name. Id. Officer Martinez informed Salinas that he was not allowed to have marijuana in the car.<sup>2</sup> Id.

After obtaining consent from Ramirez, Officer Martinez collected the glass smoking device and the glass jar of marijuana and placed both items on the roof of the car. Id. He then ran a driver's check on Ramirez which revealed his driver's license was suspended in the 3rd degree. Id. Officer Martinez also confirmed that Ramirez was 20 years old and that Salinas was 22 years of age. Id. Upon learning that Ramirez was driving with a suspended license and that he was in fact under 21 years of age, Officer Martinez asked Ramirez to step out of the vehicle. Id. He asked Ramirez if he had anymore marijuana or drugs in the vehicle. Id. Ramirez said he did not and further told Officer Martinez that he could search the vehicle. Id.

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<sup>2</sup> Pursuant to RCW 46.61.745 it is a traffic infraction to be a passenger in a vehicle with marijuana on one's person.

While Officer Martinez was speaking with Ramirez, Officer Seth Carlson, of the Othello Police Department, arrived on scene to assist with the traffic stop. *Id.* As Officer Carlson walked up to the vehicle, he noticed Salinas was making furtive movements. 1RP at 52<sup>3</sup>. He asked Salinas if he had any weapons on him. *Id.* at 54. Salinas told Officer Carlson that he had a switch blade knife on him and began pulling it out. *Id.* Officer Carlson then instructed Salinas to stop and asked if he would step out of the vehicle. *Id.* at 55. Once out of the vehicle, Officer Martinez had Salinas place his hands behind his back and interlace his fingers. CP 39. He then removed the switch blade knife from Salinas. *Id.* Officer Martinez asked Salinas if he had any other weapons and he replied "brass knuckles". *Id.* Officer Martinez removed the brass knuckles from Salinas and placed him under arrest. *Id.* A search of Salinas, incident to arrest, revealed marijuana in his pocket, a glass smoking device with burnt green leafy substance, and another glass object that appeared to be used for smoking. *Id.* Officer Martinez also found a red bandana on his person. *Id.* Salinas was wearing a red hoodie sweater and a 49ers hat. *Id.* He admitted to

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<sup>3</sup> This brief refers to the verbatim reports as follows: 1RP for February 13, 2017 suppression hearing and February 28, 2017 stipulated facts bench trial and 2RP for March 6, 2017 sentencing hearing.

being involved with a gang and said he was a Norteno. *Id.* He was subsequently transported to the Othello Police Station. *Id.*

While at the scene, Officer Martinez conducted a search of the vehicle. *Id.* On the front passenger floor board he located an open can of beer, along with a case of Budweiser beer. *Id.* Under the front passenger seat, he located a prescription bottle containing a plastic baggie. *Id.* Inside the plastic baggie, Officer Martinez observed a white, crystal like substance which tested positive for methamphetamine. *Id.* Following Miranda warnings, Salinas admitted the prescription bottle was his and that it contained methamphetamine. *Id.*

On January 27, 2017 the Appellant filed a Motion and Declaration for Suppression. CP 14, 15.

#### B. Hearing on Motion to Suppress

On February 13, 2017, the Trial Court heard the Appellant's Motion. Officers Martinez and Carlson testified on behalf of the State. The Appellant waived his right to remain silent under the Fifth Amendment to the United States Constitution and testified as well.

Officer Martinez and Officer Carlson testified in line to the factual summary set forth above.

The Appellant testified that he heard Officer Martinez say to stay in the car. *Id.* at 72. The Appellant said he did not feel free to leave because "I don't know. They kind of told me to, like, wait in there, and it was pretty cold." *Id.* "I'm not from Othello, so I wouldn't start walking anywhere." *Id.* When asked by his attorney, "did you feel you had any other choice but to comply with his demand?" *Id.* The Appellant responded, "yeah, because what am I gonna do." *Id.* When questioned by the State, the Appellant admitted he wasn't going to leave the car anyway. *Id.* at 73-74.

After hearing the testimony, the Trial Court orally ruled:

The traffic stop of the vehicle was lawful. When this defendant volunteered that the marijuana on his person but that he was twenty-two years of age, the officer by looking at the defendant had enough reasonable suspicion, if not probable cause, to ask him for his ID or to even seize his ID. But once he got that ID and verified that he was over the age of twenty-one, that probable cause, that reasonable suspicion, disappeared.

At the time he was told to remain seated in the car and not leave, that was effectively a seizure, but nothing was seized from him or no statements were obtained by him while he was in the car.

The important one which neither of the – the important aspect of the tape which neither one of the attorneys mentioned is that at some point he was taken out of the car and he was

advised by the officer that they had no reason to charge him and then the officer says, "if you want – if you want to stick around, stand here." I think that was telling the defendant he did not have to stand around; but if he was going to remain at the scene, he needed to stand out of their way. I believe they have the right to do that while they search the car.

The – at that point, one of the officers asked him if he had a knife. The defendant was cooperative and reached for the knife to take it out. The – He said he had a switchblade. ...

Now, here's the issue: At that point, the defendant is not in custody. There's no probable cause to suspect him of a crime because smoking marijuana in a car is not a crime. It's only an infraction. But just the question itself, "is that the only weapon you have?" is that a detention? I don't know. Because at that point, he volunteered – He's not in custody, so it's not a Miranda issue. "Is that the only weapon you have?" And he volunteers that he has a set of brass knuckles which are, of course, illegal and would give rise to probable cause to search him if – even more so than reasonable suspicion to search him.

So the issue is, is the question "Is that the only weapon you have?" -- is that – The defendant plainly could have said, "No," plainly could have walked away, but he didn't. He said, "I have some brass knuckles." I have no authority that says that asking a question constitutes detention. I don't believe it does.

I'll deny defense's motion to suppress.

1RP at 95-98.

On February 28, 2017, the Trial Court entered written Findings of Fact and Conclusions of Law for CrR 3.5/3.6 Hearing. CP 38.

On that same date, the Trial Court held a Stipulated Facts Bench Trial and found the Appellant guilty of Unlawful Possession of a Controlled Substance, Methamphetamine. CP 42. The Trial Court entered the Judgement and Sentence on March 6, 2017. *Id.*

On March 6, 2017, the Appellant appealed the Trial Court's ruling<sup>4</sup>.

#### IV. ARGUMENT

The issue in this appeal focuses exclusively upon the ruling of the Trial Court on the Appellant's motion to suppress evidence. "When reviewing the denial of a suppression motion, an appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law." State v. Gavin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009) (citing State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994)).<sup>5</sup> "[C]hallenged findings entered after a suppression hearing

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<sup>4</sup> While the suppression motion was both a CrR 3.5 and CrR 3.6 hearing, the Appellant did not contest the CrR 3.5 ruling during the suppression hearing nor on appeal.

<sup>5</sup> In the Brief of Appellant, the Appellant does not challenge any of the findings of fact made by the Trial Court. The Appellant only contests the conclusions of law. This Court should treat the findings entered by the Trial Court as verities.

that are supported by substantial evidence are binding, and, where the findings are unchallenged, they are verities on appeal.” State v. O’Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). “Evidence is substantial when it is enough ‘to persuade a fair-minded person of the truth of the stated premise.’” Gavin, 166 Wn.2d at 249. (*quoting State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). Conclusions of law pertaining to suppression of evidence are reviewed de novo. *Id.* (*citing State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002)). Conclusions of law erroneously labeled as findings of fact are reviewed as conclusions of law and findings of fact erroneously labeled as conclusions of law are reviewed as findings of fact. Scott’s Excavating Vancouver, LLC v. Rockman Development Group, LLC, 176 Wn. App. 335, 342, 308 P.3d 791 (2013).

**1. The Seizure of the Appellant Was Lawful.**

The Appellant contends that the Trial Court erred in denying his motion to suppress the evidence obtained in this case as fruits of an illegal seizure. Brief of Appellant at 11. Appellant argues that all of the evidence found was “fruits of the poisonous tree” from an unlawful seizure. *Id.* at 14. The Appellant only points

to two conclusions of law for that proposition: Conclusions 2 and 3.

Brief of Appellant at 16-17. Conclusion 2 states:

The point in the investigation when Salinas was asked to remain in the vehicle amounted to a seizure. However, nothing was gained by this seizure; no evidence was seized and no statements were made as a result of the request.

CP 38. Conclusion 3 states:

The point in the investigation when Salinas was asked to exit the vehicle did not amount to a seizure. Salinas was told he did not have to stay at the scene, but if he was going to “stick around”, he needed to stand in a particular location, out of their way. The officers had the right to control the scene in order to safely conduct an investigation and search the vehicle.

*Id.* There was no illegal seizure in this case. The Trial Court found that the Appellant was seized by Officer Martinez while in the car. CP 38. The Trial Court did not find that the Appellant was seized unlawfully. The Trial Court also found that the seizure ended when Officer Carlson asked him to exit the vehicle so they could conduct a vehicle search and Officer Martinez told him he did not need to stick around.

In Washington state seizures, whether of property or persons, are per se unreasonable. Gavin, 166 Wn.2d at 249.

“Under article I, section 7, a person is seized ‘only when, by means of physical force or a show of authority’ his or her freedom of movement is restrained and a reasonably person would not have believed he or she is (1) free to leave, given all the circumstances, or (2) free to otherwise decline an officer’s request to terminate the encounter.” O’Neil, 148 Wn.2d at 574 (internal cites omitted). The actions of law enforcement are viewed purely objectively. *Id.* (citing State v. Young, 135 Wn.2d 498, 501, 957 P.2d 681 (1998)). The Appellant bears the burden of provide that a seizure occurred in violation of article I, section 7. *Id.* “In what is commonly known as a *Terry stop*<sup>6</sup>, a police officer may briefly stop and detain an individual for investigation without a warrant if the officer reasonably suspects the person is engaged or about to be engaged in criminal conduct.” Gavin, 166 Wn.2d at 250 (citing State v. Day, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007)). Seizures to investigate traffic infractions do not violate article I, section 7, as long as the seizure is limited in scope. State v. Arreola, 176 Wn.2d 284, 294, 290 P.3d 983 (2012) (citing State v. Ladson, 138 Wn.2d 343, 358, 979 P.2d 833 (1999)).

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<sup>6</sup> Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

## I. SEIZURE IN THE VEHICLE

### A. Reasonable Suspicion of a Crime

The Trial Court found that when Officer Martinez asked the driver and the Appellant to remain in the car, this constituted a seizure. CP 38. This seizure was not unlawful. The Trial Court also found, and the Appellant does not dispute, that Officer Martinez had reasonable suspicion, if not probable cause, that the Appellant was involved in a crime. *Id.* When Officer Martinez first made contact with the Appellant he believed that the Appellant was under the age of twenty-one and could not legally possess marijuana. *Id.* The Trial Court found that this probable cause to seize the Appellant dissipated when Officer Martinez verified that he was twenty-two.

The Appellant contends that this means the seizure became unlawful after the Appellant showed Officer Martinez his identification. Brief of Appellant at 13. However, Officer Martinez testified, and the Trial Court found as a fact, that Officer Martinez did not verify the Appellant's age until after he ran a check of the Appellant through the Department of Licensing. CP 38; 1RP at 17. Officer Martinez told the driver and the Appellant to stay in the car

while he returned to his patrol vehicle to run their identifications. 1RP at 38.

At the time Officer Martinez asked the driver and the Appellant to stay in the car, he had not verified the Appellant's age. When Officer Martinez said to stay in the car he had reasonable suspicion, if not probable cause, to believe the Appellant was engaged in committing a crime; possession of marijuana by someone under the age of twenty-one.<sup>7</sup> "To justify a seizure on less than probable cause, *Terry* requires a reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a crime." Duncan, 146 Wn.2d at 172 (*citing Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

Officer Martinez had a reasonable, articulable suspicion that the Appellant was committing an offense. Appellant admitted to Officer Martinez to possessing a bag of marijuana in the car. 1RP at 15; CP 38. In comparing the driver and the Appellant, Officer Martinez testified that he thought the Appellant looked younger than the driver. 1RP at 16. Officer Martinez had specific, objective

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<sup>7</sup> RCW 69.50.4013(5). "No person under twenty-one years of age may possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration."

facts, to conclude that the Appellant was underage. It was only after he verified that Appellant's identity through the Department of Licensing that his suspicions were abated. This occurred after telling the driver and the Appellant to stay in the car. At the time of the seizure, Officer Martinez had reasonable suspicion to detain the Appellant for investigation of a crime.

B. Legal Traffic Infraction Investigation

In addition to his criminal investigation above, Officer Martinez also could detain the Appellant for his traffic infraction. When the Appellant showed Officer Martinez his bag of marijuana, Officer Martinez informed him he was not allowed to have that in the car. CP 38. At this point, Officer Martinez had probable cause to believe that a traffic infraction had occurred in his presence. "Probable cause requires facts and circumstances within the arresting officer's knowledge which are sufficient to justify a reasonable belief that an offense has been committed. State v. Vasquez, 109 Wn. App. 310, 318, 34 P.3d 1255 (2001) (*citing State v. Terrovona*, 105 Wn.2d 632, 643, 716 P.2d 295 (1986)).

Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's

license, insurance identification card, and the vehicle's registration, and complete and issued a notice of traffic infraction. RCW 46.64.021(2). Thus, the traffic violation exception to the application of *Terry* stop for criminal violations is distinguishable from the civil infraction before the court. We decline to extend the *Terry* stop exception under the Fourth Amendment and article I, section 7 of the Washington State Constitution to nontraffic civil infractions.

Duncan, 146 Wn.2d at 174-75.

As argued to the Trial Court, Officer Martinez had probable cause to believe the Appellant had violated RCW 46.61.745. 1RP at 84. RCW 46.61.745 states that it is a traffic infraction:

For the registered owner of a motor vehicle, or the driver if the registered owner is not then present, or **passengers in the vehicle**, to **keep marijuana in a motor vehicle when the vehicle is upon a highway**, unless it is (A) in the trunk of the vehicle, (B) in some other area of the vehicle not normally occupied or directly accessible by the driver or passenger if the vehicle does not have a trunk, or (C) in a package, container, or receptacle that has not been opened or the seal broken or contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

RCW 46.61.745(1)(a) (*Emphasis Added*).<sup>8</sup> When Officer Martinez asked the driver if there was any more marijuana in the vehicle, the

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<sup>8</sup> RCW 46.04.197 defines "highway" as "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for

Appellant volunteered that he had marijuana and held a bag up for Officer Martinez to see. 1RP at 15-16. The bag of marijuana was not in the trunk of the vehicle or in some other area not normally occupied by a driver or passenger. The bag was in the Appellant's hand. At the moment, prior to him telling the driver to stay in the car, Officer Martinez had probable cause to believe that the Appellant had committed a traffic infraction. The seizure of the Appellant was a lawful exception to *Terry* for the investigation of a traffic infraction. The Trial Court correctly ruled that the Appellant was seized by Officer Martinez and that seizure was lawful. CP 38.

## II. APPELLANT'S EXIT OF THE VEHICLE

The Appellant contends that the Appellant was still unlawfully seized when he exited the vehicle at the officers' request and that the Trial Court erred in finding that he was not. Brief of Appellant at 17-18. Appellant's argument is that the Appellant's exit of vehicle did not break the illegal seizure of the Appellant. *Id.* As set forth above, the Appellant was lawfully seized while in the vehicle. Moreover, Officer Carlson had reasonable suspicion to detain the Appellant prior to him exiting the vehicle based upon the Appellant's furtive movements and statements.

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purposes of vehicular travel." Officer Martinez stopped the vehicle the Appellant was in on East Cedar Boulevard, Othello, Washington, a public highway. 1RP at 10.

Officer Carlson testified, the Trial Court found as fact, and the Appellant does not contest, that while the Appellant was in the vehicle, Office Carlson observed him making furtive movements. *Id.* 1RP at 52-53. Seeing furtive movements and being concerned for his safety, Officer Carlson lawfully asked the Appellant if he had any weapons on him.<sup>9</sup> *Id.* The Appellant admitted to having a switch blade knife on his person. CP 38; 1RP at 54. “Other facts supportive of probable cause include furtive movements and lying to the police, both of which evidence consciousness of guilt. State v. Huff, 64 Wn. App. 641, 647, 826 P.2d 698 (1992) (*citing Peters v. New York*, 392 U.S. 40, 88 S. Ct. 1889, 1904, 20 L.Ed.2d 917 (1968) (*quoting Brinegar v. United States*, 338 U.S. 160, 69 S. Ct. 1302, 93 L.Ed. 1879 (1949) (deliberate furtive gestures at the approach of the police are strong indicia of guilty mens rea.))) (additional internal cites omitted). “An officer may ... briefly frisk ... [a] person if the officer has reasonable safety concerns to justify the protective frisk.” State v. Weyand, 188 Wn.2d 804, 811, 399 P.3d 530 (2017) (*citing State v. Fuentes*, 183 Wn.2d 149, 158, 352 P.3d 152 (2015)).

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<sup>9</sup> Appellant does not contend that Officer Carlson was not allowed to inquire as to whether the Appellant was armed.

A Terry stop-and-frisk is justified when (1) the initial stop is legitimate; (2) there is a reasonable safety concern justifying a protective frisk for weapons; and (3) the scope of the frisk is limited to the protective purposes.

State v. Lennon, 94 Wn. App. 573, 580, 976 P.2d 121 (1999) (*citing* State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993)). A protective frisk is justified when there are specific and articulable facts that create an objective, reasonable belief that the suspect is armed and dangerous. *Id.* "Generally courts are reluctant to second-guess the judgment of officers in the field and will uphold the validity of most frisk that arise from a 'founded suspicion' that is neither arbitrary nor harassing." *Id.*

In this case, the Appellant admitted to Officer Carlson that he had a switchblade on his person while he was sitting in the car. CP 38; 1RP 54. A switchblade is an illegal dangerous weapon. See RCW 9.41.250(1)(a)&(2). The Appellant tried to grab the knife while talking with the officer. 1RP 54. Based upon the Appellant's statements, furtive movements, and his attempt to reach for the weapon, Officer Carlson had reasonable suspicion to detain the Appellant for unlawful possession of a switchblade.

Officer Carlson had a further valid basis under *Terry* to conduct a protective frisk of the Appellant. After retrieving the knife,

the Appellant admitted to Officer Martinez that he also had “brass knuckles” on him. *Id.* “Brass knuckles” are also an illegal dangerous weapon. See RCW 9.41.250(1)(a). Officer Martinez then conducted a protective frisk of the Appellant for the “brass knuckles.” The initial stop of the vehicle the Appellant was a passenger in was valid. The initial detention of the Appellant to verify his age was a valid detention. Officer Carlson had reasonable safety concerns about the furtive movements of the Appellant, his admission of having a weapon on his person, and his attempt to grab the weapon. The frisk of the Appellant was limited only to secure the knife and then the “brass knuckles.” Prior to the Appellant exiting the vehicle the officers had reasonable suspicion to detain him for possession of an illegal weapon and a valid and reasonable basis to conduct a *Terry* protective frisk.

The Appellant argues that the Trial Court erred in finding that the Appellant was no longer seized when he exited the vehicle. The Appellant contends that he was still seized. As set forth above, it is irrelevant whether the Appellant was no longer seized when he exited the vehicle or still seized. The officers had reasonable suspicion to seize him on suspicion of having an illegal dangerous weapon. The officer also had a valid and reasonable basis to seize

him to conduct a *Terry* protective frisk. Either way the officers had a valid and lawful basis to frisk the Appellant to retrieve the switchblade and after finding the knife a lawful basis to inquire and locate the “brass knuckles” that resulted in the Appellants arrest. The events that occurred after the Appellant exited the vehicle were lawful and appropriate under the circumstances. This Court should uphold the Trial Court’s denial of the Appellants suppression motion.

**2. The Trial Court Did Not Rely on Inevitable Discovery**

The Appellant contends that the Trial Court relied on inevitable discovery in denying his motion to suppress. Brief of Appellant at 19. This is not correct. While the Appellant asserts that the Trial Court relied on inevitable discovery, almost all of this section of the Appellant’s brief is focused on the attenuation doctrine and not inevitable discovery. *Id.* at 19-22. The Appellant claims that the Trial Court relied in inevitable discovery in its written Conclusion 2. *Id.* at 19. Conclusion 2 states in full:

The point in the investigation when Salinas was asked to remain in the vehicle amounted to a seizure. However, nothing was gained by this seizure; no evidence was seized and no statements were made as a result of the request.

CP 38. The Appellant contends that the Trial Court erred in finding that nothing was gained during this seizure and that the Trial Court applied inevitable discovery to reach its conclusion. Brief of Appellant at 19. This is not the inevitable discovery doctrine.

The inevitable discovery doctrine allows for the admission of illegally obtained evidence if the State can show by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means. State v. Winterstein, 167 Wn.2d 620, 634, 220 P.2d 1226 (2009) (citing Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L.Ed.2d 377 (1984)). The inevitable discovery doctrine is not an exception to the exclusionary rule in Washington State. *Id.* at 636.

In this case, the State did not argue nor rely on the inevitable discovery doctrine. The State argued to the Trial Court and to this Court that the seizure of the Appellant was lawful. Conclusion 2 further does not state that the seizure was unlawful. CP 38. The Trial Court only concluded that the Appellant was seized when Officer Martinez said “stay in the car.” *Id.* The Trial Court found that nothing was gained from the seizure. *Id.* This conclusion was not based upon illegally obtained evidence or a conclusion that evidence would have inevitably been found. As argued above, the

State maintains that at the time the Appellant heard Officer Martinez say "stay in the car," Officer Martinez had two bases to lawfully detain the Appellant: (1) for suspicion that he was underage in possession of marijuana and (2) suspicion that he had committed the traffic infraction possessing marijuana improperly in a vehicle. As the seizure of the Appellant was lawful, the Trial Court could not rely on inevitable discovery to find that the Appellant was in fact seized.

The Appellant may try to argue that the Trial Court erred in concluding that all of the conclusions after conclusion 2 were admissible by applying inevitable discovery. This argument also fails because the Trial Court found in Conclusion 3 that the Appellant was told he was free to leave, effectively ending the seizure. CP 38. And, as set forth above, the officers still had a lawful basis to detain the Appellant after his admission of having a switchblade on his person. This argument again is not inevitable discovery. This Court should reject the Appellant's inevitable discovery argument.

### **3. The Trial Court Did Not Rely on the Attenuation Doctrine**

The Appellant spends the bulk of their brief arguing that the Trial Court applied the attenuation doctrine in reaching its ruling.

The Appellant has presented no evidence to show that the Trial Court relied on the attenuation doctrine. The Trial Court did not rely on the attenuation doctrine and this Court should decline to engage in such analysis.

In order for the attenuation doctrine to apply to a case the State must “demonstrate sufficient attenuation from the illegal search to dissipate its taint.” State v. Ibarra-Cisneros, 172 Wn.2d 880, 884-85, 263 P.3d 591 (2010) (*quoting State v. Childress*, 35 Wn. App. 314, 316, 666 P.2d 941 (1983)). The State did not argue attenuation in this case. “Courts should not consider grounds to limit application of the exclusionary rule when the State at a CrR 3.6 hearing offers no supporting facts or argument. *Id.* at 885. “Accordingly, the Court of Appeals erred in relying on the attenuation doctrine as the basis to allow the cocaine evidence against Ibarra-Cisneros.” *Id.*

The Appellant wants this Court to engage in an attenuation doctrine analysis and find that it does not apply to the facts of this case. Brief of Appellant at 19-39. The State did not argue for the application of the attenuation doctrine to the Trial Court. The Trial Court did not engage in any attenuation analysis. It is error for this

Court to engage in that analysis now. This Court should not engage in such analysis.

The Appellant may argue that this Court should engage in that analysis because the Trial Court applied the attenuation doctrine. This is not the case. The only conclusions that the Appellant can point to for this claim are Conclusions 2 and 3. CP 38. Conclusion 2 states:

The point in the investigation when Salinas was asked to remain in the vehicle amounted to a seizure. However, nothing was gained by this seizure; no evidence was seized and no statements were made as a result of the request.

Id. Conclusion 3 states:

The point in the investigation when Salinas was asked to exit the vehicle did not amount to a seizure. Salinas was told that he did not have to stay at the scene, but if he was going to “stick around”, he needed to stand in a particular location, out of their way. The officers had the right to control the scene in order to safely conduct an investigation and search the vehicle.

Id. Appellant may contend that the Trial Court applied the attenuation doctrine in finding a break between when the Appellant was seized while in the car and the lawful *Terry* frisk that occurred after he exited the vehicle. This is not the attenuation doctrine.

The State maintains that the Appellant was lawfully seized in the vehicle. The Trial Court ruled that he was seized, but the Trial Court never ruled that the seizure was unlawful. CP 38. The attenuation doctrine requires a break between unlawful government conduct and the obtaining of evidence. There was no unlawful government conduct in this case. "Evidence is not 'fruit of the poisonous tree' if the connection between the challenged evidence and the illegal action of the police is 'so attenuated as to dissipate the taint.'" State v. Eserjose, 171 Wn.2d 907, 921, 259 P.3d 172 (2011) (*quoting* Wong Sun v. United States, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L.Ed.2d 441 (1963)). There was no "taint" in this case. The Appellant was lawfully seized in the vehicle. After he exited the vehicle, he was told he could stay or go. The Appellant admitted to having a switchblade on his person. This admission led to a frisk of the Appellant and discovery of illegal "brass knuckles." There was no illegal conduct by police.

The Trial Court found that the Appellant was seized in the car. CP 38. The Trial Court did not find that the seizure was unlawful. *Id.* The Trial Court did not engage in any attenuation analysis. 1RP 95-98. The Trial Court did not find that any break in time was needed to remove the "taint"; because there was no

“taint.” This Court should not engage in any attenuation analysis and should reject the Appellant’s request to do so.

## **V. CONCLUSION**

The State respectfully requests this Court deny the Appellant’s appeal of the Trial Court’s denial of his motion to suppress. The Appellant was lawfully seized when Officer Martinez returned to his patrol vehicle to verify the Appellant’s age. This seizure was lawful because Officer Martinez had reasonable suspicion that the Appellant was unlawfully in possession of marijuana under the age of twenty-one. Officer Martinez also had probable cause to believe the Appellant was committing a traffic infraction for possession of marijuana inside a vehicle. After verifying the Appellant’s age, Officer Martinez’s reasonable suspicion ended, but his probable cause remained. Prior to Officer Martinez re-contacting the Appellant, Officer Carlson observed furtive movements from the Appellant. The Appellant admitted to Officer Carlson that he had a switchblade on his person. Officer Carlson had reasonable suspicion at that point to detain the Appellant for unlawful possession of a dangerous weapon. After retrieving the knife, the Appellant admitted to possessing “brass

knuckles”, also an unlawful dangerous weapon. Appellant was arrested for possession of the “brass knuckles.”

At no point did the Appellant’s detention become unlawful. The Trial Court never ruled that the seizure of the Appellant was unlawful, merely that a seizure did occur. The Trial Court did not rely on inevitable discovery in reaching its conclusions of law. There is no evidence in the record that the Trial Court did and any such argument is purely speculative. The State did not argue to the Trial Court that the Trial Court should apply the attenuation doctrine. There is no evidence in the record that the Trial Court relied on the attenuation doctrine. Without the State arguing attenuation to the Trial Court, it is error for an appellate court to engage in that analysis now. The attenuation doctrine is inapplicable and this Court should reject the Appellant’s request to inquire into it. No unlawful seizures occurred in this case.

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The State respectfully requests this Court deny the Appellant's appeal and uphold the ruling of the Trial Court.

DATED this 20 day of OCTOBER, 2017.

RANDY J. FLYCKT  
Adams County Prosecuting Attorney

By:   
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