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No. 56896-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

GARY GATEWOOD,

Appellant.

2007 APR 20 10 56 AM '03

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Douglas North

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The lower court erred in denying the defense motion to suppress Mr. Gatewood's firearm, marijuana, and cocaine as fruits of a pretextual stop.

2. The lower court erred in finding that the officers had specific articulable facts to justify a Terry stop.

3. The lower court erred in failing to enter written findings of fact and conclusions of law following a CrR3.6 hearing.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Article I, section 7 of the Washington Constitution prohibits pretextual stops. Police officers spotted Mr. Gatewood displaying a surprised look and making what was perceived to be a "furtive movement" as the officers passed by so they later stopped him for a civil infraction in order to investigate the suspicious behavior they had observed earlier. Should this Court find that the stop was pretextual, requiring suppression under Article I, section 7?

2. Under the Fourth Amendment, police may briefly detain an individual for questioning in a criminal investigation only when the stop is based on specific, articulable facts that would cause a reasonable person to believe that criminal activity is afoot. Police observed Mr. Gatewood looking surprised and making a "furtive movement" as they passed him. After returning to the location at which they had first spotted Mr. Gatewood, the officers observed him jaywalking.

Should this Court find that the police lacked specific, articulable facts that justify a warrantless Terry stop and suppress the evidence that was found as fruits of the stop?

3. CrR 3.6 requires the trial court to enter formal written findings at the conclusion of a CrR 3.6 hearing. The lower court entered no such findings in the present case. Should this Court dismiss Mr. Gatewood's case because the lower court failed to comply with CrR 3.6?

C. STATEMENT OF THE CASE

Shortly after midnight on June 26, 2004, Officers Chan and Longley were patrolling Rainier Avenue South in Seattle. 1RP¹ 5-6, 47. As they drove north Officer Longley, who was the passenger in the patrol car, noticed three or four people sitting at a bus shelter. 1RP 6. Officer Longley testified that Mr. Gatewood was among these people and that Mr. Gatewood's "eyes got big" when he saw the officers driving by the bus shelter. 1RP 6-7. Officer Longley further testified that Mr. Gatewood then reached to his left and turned his body to the left. 1RP 7. The officers then decided to drive east on Hudson and then south on 39th Avenue South so that they could return to the bus shelter. 1RP 8, 38.

As the officers drove to the intersection of 39th Avenue and Rainier

¹¹ The Verbatim Report of Proceedings consists of four volumes of transcript ("RP"), which will be referred to as follows:

1RP	Suppression Hearing (7/7/05),
2RP	Suppression Hearing (7/12/05).

Avenue, Mr. Gatewood left the bus shelter and walked across Rainier Avenue about twenty feet north of where that street intersects 39th Avenue. 1RP 8-9. Officer Chan testified that he believed Mr. Gatewood was jaywalking at this point. 1RP 41. SMC 11.40.140 provides:

No pedestrian shall cross an arterial street other than in a crosswalk, except upon the following portions of streets within the Pike Place Market Historical District:

- A. Pike Street, Pine Street, Stewart Street and Virginia Street, west of First Avenue;
- B. Pike Place between Pike Street and Virginia Street.

SMC 11.40.140. "Crosswalk" is defined as "the portion of the roadway between the intersection area and the prolongation or connection of the farthest sidewalk line." SMC 11.14.135.

The officers, who admitted to having intended to stop Mr. Gatewood for questioning before he had crossed Rainier Avenue, pulled in front of Mr. Gatewood to block his path at the intersection of West Dawson and 39th Avenue. 1RP 10-11. Officer Chan testified that the reason for the stop was to cite Mr. Gatewood for jaywalking. 1RP 47.

Officer Longley got out of the patrol car and said, "Stop. I need to talk to you. 1RP 21-22. Mr. Gatewood turned around and walked in the opposite direction. 1RP 22. Officer Longley followed Mr. Gatewood and told him to stop. 1RP 11. After having walked about forty feet, Mr. Gatewood stopped reached into his pants, and put something into the bushes. 1RP 11-12. Officer Longley suspected that Mr. Gatewood had thrown a gun into the bushes, but could not tell

whether or not it actually was a gun. 1RP 12, 25.

The officers took Mr. Gatewood into custody and recovered a .22 caliber hand gun lying on the ground where they had saw Mr. Gatewood discard something. 1RP 14. Officer Longley then went to the bus shelter where Mr. Gatewood had been sitting and found cocaine. 1RP 15, 17. The Second Amended Information charged Mr. Gatewood with Unlawful Possession of a Firearm in the Second Degree, contrary to RCW 9.41.010 (Count I); Unlawful Possession of Cocaine, contrary to RCW 69.50.401(d) (Count II); and Unlawful Possession of Forty Grams or Less of Marijuana, contrary to RCW 69.50.401(e) (Count III). CP 62-63 (Second Amended Information).

On July 7, 2005, and July 12, 2005, a CrR 3.6 hearing was held in the Superior Court for the State of Washington for King County before the Honorable Douglas North. 1RP. At the hearing, Mr. Gatewood sought to suppress the firearm and controlled substances as fruits of an illegal stop. RP. The lower court denied the motion on the ground that the officers had specific articulable facts to support a Terry stop. 2RP 76. Mr. Gatewood was subsequently convicted of Count I and Count III. CP 13-19; CP 20-22. This appeal timely follows.

D. ARGUMENT

1. THE FIREARM AND MARIJUANA SHOULD HAVE BEEN SUPPRESSED BECAUSE THEY ARE FRUITS OF A PRETEXTUAL STOP.

a. The Fourth Amendment prohibits unreasonable warrantless searches and seizures. The Government may not unreasonably search an individual or his personal effects without a warrant or probable cause. U.S. Const. Amend. IV. The burden is on the State to prove that a warrantless search by police was justified. Chimel v. California, 395 U.S. 752, 762, 89 S.Ct. 2034, 23 L.Ed. 2d 685 (1969) (citing United States v. Jeffers, 342 U.S. 48, 51, 72 S.Ct. 93, 95, 96 L.Ed. 59 (1951)). With few exceptions, a warrantless search is presumed to be unreasonable. Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.E.d.2d 576 (1967). The U.S. Supreme Court has emphasized that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure. Chimel, 395 U.S. at 762, at 20, 88 S.Ct. at 1879; Terry v. Ohio, 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions. The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative. The burden is on those seeking the exemption to show the need for it.

Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). (Citations and internal quotes omitted).

Even under the Fourth Amendment an investigatory stop for a traffic infraction (Terry stop) is proper under the Fourth Amendment only if the officer's action was justified at its inception. State v. Ladson, 138 Wn.2d 343, 351, 979 P.2d 833, 839 (1999) (citing Terry, 392 U.S. at 20).

b. Mr. Gatewood was seized for the purposes of the Fourth Amendment when the officer blocked his path and told him to stop. When police lack probable cause, they may briefly detain and question a person only if they have “a well founded suspicion based on objective facts that he is connected to actual or potential criminal activity.” State v. Sieler, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980). A seizure for purposes of the Fourth Amendment occurs “when the individual’s freedom of movement is restrained by a show of force or authority, such that ‘in view of all of the circumstances . . . a reasonable person would have believed that he was not free to leave.’” State v. Sweet, 44 Wn.App. 226, 230, 721 P.2d 560 (1986) (quoting State v. Friedrick, 34 Wn.App. 537, 541, 663 P.2d 122 (1983)).

In State v. Stroud, the Court concluded that a reasonable person does not flee an officer’s order to stop. State v. Stroud, 30 Wn.App. 392, 396, 634 P.2d 316 (1981). The court has also held that a seizure occurred when a suspect fled after an officer stated, “Stop. I want to talk to you.” Friedrick, 34 Wn.App. at 540. In the present case, Officer Longley testified that after he told Mr. Gatewood to stop the first time, Mr. Gatewood turned 180 degrees and walked the other way. 1RP 21-22. The officer further testified, “that’s when I started

moving up on him. I told him several times to stop. I know at least in my mind, I told him more than once, I told him to stop, I wanted to talk to him. He refused to stop.” IRP 11. Here the police prevented Mr. Gatewood from continuing in the direction he had been walking and ordered him to stop several times. In view of all of the circumstances here, a reasonable person would not feel free to leave. Like Friederick, Mr. Gatewood was seized for purposes of the Fourth Amendment when Officer Longley got out of the patrol car and said, “Stop. I want to talk to you.” See also State v. Mendez, 137 Wn.2d 208, 22-23, 970 P.2d 722 (1999).

c. Article I, section 7 of the Washington State Constitution, which provides even broader protection than the Fourth Amendment, does not permit pretextual stops. Under article I, section 7 of the Washington Constitution, warrantless searches are per se unreasonable. State v. Morse, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). Article I, section 7, “unlike any provision in the federal constitution, explicitly protects the privacy rights of Washington citizens.” State v. Stroud, 106 Wn.2d 144, 148, 720 P.2d 436 (1986) (citing State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982)). “It is now settled that Article 1, section 7 is more protective than the Fourth Amendment, and a Gunwall analysis is no longer necessary.” State v. Jackson, 150 Wn.2d 251, 259, 76 P.3d 217 (2003) (citing State v. Vrieling, 144 Wn.2d 489, 495, 28 P.3d 762 (2001)). Under the more restrictive state standard, courts are required to look beyond the formal justification for the stop to the actual one. Ladson, 138 Wn.2d at 353.

Although the United States Supreme Court held in Whren v. United States 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed. 2d 89 (1996), that pretextual traffic stops do not violate the Fourth Amendment, pretextual stops are violative of the Washington State Constitution. Ladson, 138 Wn.2d at 358. Decades ago, the state Supreme Court held that an *arrest* may not be used as pretext for further speculative criminal investigation. State v. Michaels, 60 Wn. 2d 638 374 P.2d 989 (1962). The Court went even farther in Ladson, supra and held that a *traffic stop* may not be used as pretext.

[T]he problem with a pretextual traffic stop is that it is a search or seizure which cannot be constitutionally justified for its true reason (i.e., speculative criminal investigation), but only for some other reason (i.e., to enforce traffic code) which is at once lawfully sufficient but not the real reason. Pretext is therefore a triumph of form over substance; a triumph of expediency at the expense of reason. . . Pretext is result without reason.

Id. at 351.

d. The officers' stop of Mr. Gatewood for for jaywalking was a pretext to conduct a speculative criminal investigation. The record indicates that the officers wanted to stop Mr. Gatewood *before* he had jaywalked. It was the “furtive” movement that Officer Longley observed that made the officers suspicious. However, the officers did not observe any criminal activity, nor did they see what, if anything, Mr. Gatewood hid underneath the seat at the bus shelter. At the CrR 3.6 hearing, when asked if the officers had decided to stop Mr. Gatewood before they saw him jaywalk, both officers Longley and Chan admitted that the furtive movement made them interested in making contact with Mr. Gatewood:

Q: Now, Ms. Weston asked you also what it was that made you interested in Mr. Gatewood on direct examination. Your testimony was, furtive movement when he was in the bus shelter, and the jaywalking that occurred after you guys -- you believed he was jaywalking -- that occurred after you had driven around and down 39th Avenue; is that correct?

A: Correct.

Q: That was the reason you wanted to contact Mr. Gatewood; is that right?

A: That's correct

Q: When you were going northbound on 39th Avenue -- excuse me -- northbound on Rainier Avenue South, you saw him lift his hand like he was putting something behind him. Was that your testimony?

A: Yes.

Q: And you didn't see what it was that he was putting behind him; isn't that right?

A: That's correct.

1RP 25.

Officer Chan, who admitted that he had no knowledge of weapons or narcotics in Mr. Gatewood's possession, testified that the officers intended to investigate Mr. Gatewood based on nothing more than the furtive movement:

Q: You didn't see him describing a weapon like a weapon in the bus shelter?

A: He described him, seeing him putting his hand under the seat area as if he was possibly concealing something unknown, what it might have been.

Q: He didn't say what it was?

A: No.

Q: He didn't say he had a gun, go back?

A: No.

Q: He didn't say I think he had drugs, go back?

A: No.

Q: You didn't know what it was, but you were going to go check it out?

A: Yes.

1RP 59-60.

The officers were intent on conducting an investigation with the hopes of uncovering evidence of criminal activity on Mr. Gatewood's person, which is why they did not stop at the bus shelter to look underneath the seat where they speculated that Mr. Gatewood may have hid something. Instead, the officers drove north on Rainier Avenue, turned around, and used jaywalking as an excuse to stop Mr. Gatewood:

A: It was clear to me when he crossed the arterial that there not only was a danger to traffic but himself. That was the reason for the stop.

Q: You were stopping him for jaywalking?

A: That was one of the reasons, absolutely, besides his other activities.

Q: I want to be clear. You stopped him because you believed he wasn't crossing at an intersection?

A: Yes.

Q: There were other cars? I want to be clear. You are not saying there were other cars between yourself and Mr. Gatewood when you crossed Rainier?

A: No. No. You mean on Rainier or on 39th?

Q: On Rainier.

A: I don't recall seeing any.

IRP 56

Because it was past midnight and there was no traffic, the officers could not have reasonably believed that Mr. Gatewood was presenting a danger to himself or to traffic by crossing an arterial street twenty feet away from the intersection, as Officer Chan testified. The alleged jaywalking cannot justify a stop when the actual reason was to find out what Mr. Gatewood may have hid under the seat when the officers initially drove by the bus shelter.

“The essence of a pretextual traffic stop is that the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to driving.” Ladson, 138 Wn.2d at 349. The civil infraction that was alleged in the present case should be treated exactly the same as the traffic violation that occurred in Ladson. Despite defense counsel raising the issue of pretext at the suppression hearing (2RP 47-49), the trial court erred in admitting evidence that was discovered as a direct result of a pretextual stop.

e. The evidence must be suppressed. Our state Supreme Court reiterated that article I, section 7 is more protective of an individual's rights than parallel provisions in the Fourth Amendment. White, 97 Wn. 2d at 108. The court went on to note that “the results reached by the United States Supreme Court in

DeFillippo is justifiable only if one accepts the basic premise that the exclusionary rule is merely a remedial measure for Fourth Amendment violations.” Id. at 109. The exclusionary rule’s purpose is to deter unlawful police action. However, “article 1, section 7 differs from this interpretation of the Fourth Amendment in that it clearly recognizes an individual’s right to privacy with no express limitations.” Id. at 110.

We think the language of our state constitutional provision constitutes a mandate that the right of privacy shall not be diminished by the judicial gloss of a selectively applied exclusionary rule. In other words, the emphasis is on protection of personal rights rather than on curbing governmental actions. . . . The important place of the right to privacy in Const. art. 1, § 7 seems to us to require that whenever the right is unreasonably violated, the remedy must follow.

Id. at 110 (emphasis added). When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. State v. Kennedy, 107Wn.2d 1, 4, 726 P.2d 445 (1986). Under article I, section 7, suppression is constitutionally required. State v. White, 97 Wn.2d. 92, 110-112, 800 P.2d 1061(1982).

2. THE OFFICERS LACKED SPECIFIC, ARTICULABLE FACTS TO SUPPORT REASONABLE SUSPICION FOR A TERRY STOP.

a. Terry stops require reasonable and articulable suspicion of criminal activity. Limited searches and seizures for investigative purposes are permissible under the Fourth Amendment only if they are reasonable and based on specific, articulable facts that criminal activity is afoot. White, 97 Wn.2d. at 105 (quoting Terry, 392 U.S. at 16).

b. The trial court found reasonable suspicion on spurious grounds. The lower court, remaining silent on the issue of pretext, found that the stop was

justified based on reasonable suspicion. 2RP 76. At the conclusion of the suppression hearing, the court stated:

Well, I'll deny this defense motion to suppress. I believe that there was a proper basis for a Terry stop here. I think that taking all the circumstances together the officers had reasonable articulable suspicion of criminal activity based upon driving past the bus shelter, seeing Mr. Gatewood's startled reaction to the police being there, his furtive movements in trying to conceal something in the bus shelter followed by his leaving the bus shelter and crossing the street in an apparently illegal manner.

Officer Chan indicated he thought Mr. Gatewood may have seen him come back. That may have been what caused Mr. Gatewood to leave and jaywalk across the street at that time. All those circumstances together provide a sufficient justification, provide a rather reasonable articulable suspicion of criminal activity which provided a basis for a Terry stop.

2RP 76.

c. The facts were insufficient to establish reasonable and articulable suspicion. In making its ruling on Mr. Gatewood's suppression motion, the court relied upon State v. Sweet, 44 Wn.App. 226, 721 P.2d 560 (1986). 2RP 42. In that case, the police had received a call about a suspicious vehicle and later found that vehicle parked in front of a closed business. Id. at 230. Prior to physically detaining Sweet, the officers knew these facts: (1) Sweet appeared to be connected with a "suspicious" vehicle; (2) the vehicle was parked outside a business which had been closed for many hours; (3) Sweet was standing with his back against a building (apparently hiding) when first noticed; (4) the area where Sweet was standing was not frequently traveled at 11:20 p.m.; (5) Sweet fled at a full run when the officers began to approach him in their car; (6) after a chase, the officer contemporaneously stopped Sweet and observed him to be wearing gloves

and holding a stocking mask; (7) it was a mild spring evening. Id. The court found that the officers were entitled to stop Sweet because they had specific articulable facts supportive of reasonable suspicion. Id. at 231.

The totality of the circumstances in Sweet pointed to a much higher likelihood that criminal activity was afoot than in the case at bar. In the present case, (1) Mr. Gatewood looked surprised when the police drove by the bus shelter, (2) Officer Longley observed a furtive movement, and (3) minutes later, Mr. Gatewood simply walked across the street. In Sweet, the defendant “immediately fled at **full run**” the moment the police saw him. Id. at 228. The fact that Mr. Gatewood crossed an arterial a mere twenty feet away from the intersection when there was no traffic is insignificant. That fact would not cause a reasonable person to believe that someone is involved in criminal activity. The officers did not say that Mr. Gatewood ran away as they approached; they were not even certain as to whether or not he saw the patrol car drive to the bus shelter for the second time. 2RP 57. It was just after midnight, there was no traffic, and it would be unreasonable for the officers to believe that Mr. Gatewood was engaged in criminal activity based on the jaywalking. Likewise, the furtive movement Officer Longley observed when the officers first drove by the bus would not cause a reasonable person to believe criminal activity is afoot, even combined with subsequent jaywalking.

The trial court also relied upon State v. Graham, 120 Wn.2d 711, 927 P.2d 227(1996) when it denied the Mr. Gatewood’s motion to suppress evidence.

2RP 42. In Graham, at around 11 p.m., officers on bicycles saw Graham carrying a wad of money in one hand and a plastic wrapper containing what appeared to be crack cocaine in the other. Id. at 714. As soon as he saw the officers, Graham shoved the items into his pockets and began crossing the street against the "Don't Walk" light. The officers called for Graham to stop and come back to talk to them. Id. at 714-15. When he did not return, an officer went into the street and physically brought him back. Id. One officer testified that Graham was sweating profusely, appeared nervous, and continued to pull away from her. Graham would not take his hands out of his pockets, so the officers slowly removed his hands. Id. The officer then went inside Graham's front pockets to see if what they had seen was rock cocaine. Id.

The primary distinction between Graham and the present case is that in Graham, the officers actually saw what they believed to be illegal drugs in the defendant's hand before he made any furtive movements. In the present case, there was no wad of money, there was nothing to indicate that Mr. Gatewood was holding cocaine or marijuana. Officer Longley only speculated that Mr. Gatewood *may* have hidden *something* as the officers drove by the bus shelter the first time. Furthermore, Mr. Gatewood did not immediately flee as soon as he saw the police as the defendant in Graham did.

While furtive movements may be *supportive* of probable cause, State v. Huff, 64 Wn. App. 641, 826 P.2d 698 (1992), they have not been found to be sufficient without more to give rise to reasonable suspicion. In Huff, an officer

who was trained in detecting narcotics made an arrest after he observed the passenger in an automobile make furtive movements as the officer attempted to make a traffic stop. Id. at 643. After pulling the car over, the officer smelled the odor of methamphetamine. Id. When the officer asked the passenger for identification, the passenger lied about her identity and produced false documents. Id. at 644. The officer, based on these circumstances, seized the vehicle and obtained a search warrant. Id. A search of the vehicle yielded methamphetamine. Id. The Court found that based on these circumstances, probable cause existed. Id. at 648.

In the present case, Mr. Gatewood did not provide police with false information before being stopped. The police had no articulable facts to support a suspicion that Mr. Gatewood had contraband. In the present case, the officers made a decision to stop Mr. Gatewood solely on the basis of furtive movements and jaywalking.

d. Suppression of evidence is the appropriate remedy when a person's Fourth Amendment rights have been violated. Where there has been a violation of the Fourth Amendment, courts must suppress evidence discovered as a direct result of the search as well as evidence which is derivative of the illegality, the fruits of the poisonous tree." Nardone v. United States, 308 U.S. 338, 341, 60 S.Ct. 2676, 84 L.E. 307 (1939); Wong Sun v. United States, 371 U.S. 484, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963).

3. THE LOWER COURT ERRED BY FAILING TO
ENTER WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

CrR 3.6, in plain language, clearly mandates the entry of formal findings and conclusions following a suppression hearing. CrR 3.6(b) provides:

If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law.

CrR 3.6(b).

In the present case, the lower court did not enter formal findings. Our state Supreme Court, applying the analagous CrR 6.1(d) to bench trials, has held:

. . . [T]he failure to enter written findings of fact and conclusions of law as required by CrR 6.1(d) requires remand for written findings and conclusions. An appellate court should not have to comb an oral ruling to determine whether appropriate “findings” have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.

State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998).

This Court has also held that when a case comes before this court without the required findings, there is a *strong presumption* that dismissal is the appropriate remedy. State v. Smith, 68 Wn.App. 201, 209-10, 842 P.2d 494 (1998). “Lack of written findings of fact on a material issue in which the State bears the burden cannot be harmless unless the oral opinion is so clear and comprehensive that written findings would be a mere formality.” Id. at 208. In the case at bar, the officers’ true motivation for stopping Mr. Gatewood was a material fact in dispute. The lower court’s oral ruling was not comprehensive

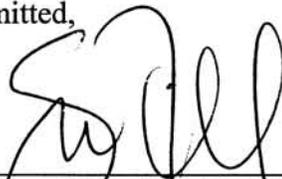
enough for this Court to overlook the requirements of CrR 3.6, for the lower court failed to address the issue of pretext, which was raised by the defense. This Court should therefore dismiss Mr. Gatewood's convictions for Unlawful Possession of a Firearm and Possession of Marijuana or, in the alternative, reverse and remand for entry of formal findings.

E. CONCLUSION

For the foregoing reasons, Mr. Gatewood respectfully asks this Court to reverse his convictions for Unlawful Possession of a Firearm in the 2nd Degree and Possession of Marijuana on the ground that the only evidence to support those charges were the fruits of an illegal stop. Furthermore, the absence of formal findings at the conclusion of the CrR 3.6 hearing is ground for dismissal.

DATED this 30th day of May, 2006.

Respectfully submitted,



Susan Wilk (WSBA 28250)
Washington Appellate Project (91052)
Attorney for Appellant

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

STATE OF WASHINGTON,)
)
 Respondent,) NO. 56896-5-1
)
 v.)
)
 GARY GATEWOOD,)
)
 Appellant.)

2006 MAY 30 11:50 AM
CLERK OF COURT
APPELLATE DIVISION

CERTIFICATE OF SERVICE

I, MARIA RILEY, CERTIFY THAT ON THE 30TH DAY OF MAY, 2006, I CAUSED A TRUE AND CORRECT COPY OF THE **APPELLANT'S OPENING BRIEF** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

KING COUNTY PROSECUTOR'S OFFICE
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104

U.S. MAIL
 HAND DELIVERY

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF MAY, 2006.

x _____ 

Washington Appellate Project
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Seattle, WA 98101
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