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SEP 28 2010
King County Prosecutor
Appellate Unit

NO. 65475-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

S.S.,

Appellant.

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

The Honorable Christopher Washington, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by denying the appellant's motion to suppress a gun and marijuana because a police officer found the items during an unlawful protective frisk for weapons.

2. The trial court erred by finding "Officer LuBrant recollected some of the occupants [of the stopped vehicle in which the appellant was one of the passengers] were acting aggressive and belligerent." CP 36 (Finding of Fact 17).

3. The trial court erred by concluding "[i]t was reasonable for the officers to frisk the [sic] all the vehicle occupants." CP 39 (Conclusion of Law IV).

Issue Pertaining to Assignments of Error

Did Officer LuBrant and/or his colleagues provide specific, articulable facts that supported an objectively reasonable belief that the appellant could be armed and dangerous, which is the showing required under the Fourth Amendment and article I, section 7 to justify a protective frisk of a detainee?

B. STATEMENT OF THE CASE

At 1:03 p.m., Federal Way police officers on patrol received a dispatch alleging 12 underage males had been drinking and were involved

in a fight outside a trailer in a local trailer park. RP 23-26, 44-45, 56-57, 65-66, 74, 87. The dispatcher informed officers no weapons had been involved during the altercation. RP 100-01. The group had just entered a red Honda that was reportedly leaving the trailer park. RP 26-28, 90.

Officer Rodriguez stopped a car matching the description as it was approaching the park exit. RP 31-34. He wanted to find out what role the youths in the car had in the alleged fight, as well as to check for underage drinking and driving. RP 28, 48, 57. Rodriguez did not know if the Honda's occupants were participants in the fight or merely witnesses. RP 48-49.

Rodriguez asked everyone to step out and stand along a fence near the Honda. There were seven people – four females and three males. One of those males was the appellant, S.S. Although they were a bit reluctant to leave the car, the youths complied with Rodriguez's commands. None caused any problems. RP 34-36, 49-51. Rodriguez told them they were not free to leave until officers could determine a crime had not been committed. RP 36, 51.

Rodriguez was concerned for his safety. He was outnumbered seven to one and needed to see everyone's hands to determine whether anyone held anything. RP 34-36, 59. Although Rodriguez saw nothing to

indicate anyone in the car had been drinking, it was his general experience that people can become more aggressive when intoxicated. RP 28-30, 51.

Rodriguez called for assistance and Officer Guillermo arrived quickly. RP 36-37, 66-67. Guillermo saw the youths lined up along a fence and learned that the first responder, Officer LuBrant, had gone to the area of the park where the fight allegedly occurred. RP 65-68. Guillermo went there to check on LuBrant. When Guillermo arrived, LuBrant told him no one with whom he spoke had been involved in a fight. RP 67-68, 88-89, 99-100. Guillermo then returned to help Rodriguez, followed shortly thereafter by LuBrant. RP 68, 90-91, 101-02.

Guillermo observed each of the three males from the Honda assume a "fighting posture," with their feet spread wide, arms out at their sides, chins up defiantly, and glares on their faces. RP 69-70. Guillermo said this was behavior that typically preceded a confrontation or assault. RP 71. Rodriguez saw no posturing. RP 52. And LuBrant could say only that he "was told" that "some people in the group were becoming belligerent towards the officers[.]" RP 91-92.¹

¹ LuBrant's testimony thus contradicts that portion of the trial court's Finding of Fact 17, which states that "Officer LuBrant recollected that some of the occupants were acting aggressive and belligerent." CP 36. As his testimony makes clear, however, LuBrant merely *heard* about this behavior from someone else. Hence S.S.'s second assignment of error set

At about this time, Guillermo said, Officer Lygibb arrived and seized a pepper spray canister and bullet round that was dangling from the belt of one of the young men other than S.S. RP 69, 72, 77-79.² The officers then decided to frisk each detainee for safety reasons. RP 37-38, 53-54, 72-77, 91-92, 101-05.

After being told to face and put his hands on the fence, S.S. contorted his body in a manner suggesting he was trying to make it more difficult for the officer to frisk him. RP 92-93, 106-07. As LuBrant frisked outside S.S.'s coat, he felt a large, heavy object inside a pocket. RP 92-93. Because it could have been a weapon, LuBrant unzipped the coat pocket, looked inside, saw the handle of a pistol, grabbed it, and announced his discovery to his colleagues. RP 39, 72-73, 93-94, 107-08.

LuBrant and Lygibb took S.S. to the ground and arrested him for unlawful possession of a firearm. RP 40, 72, 94-95. LuBrant searched S.S. incident to arrest and found seven small baggies containing marijuana. RP 95-98.³

forth above.

² Lygibb did not testify.

³ S.S. stipulated he had previously been adjudicated guilty of residential burglary, that the gun was operable, and that the material contained within the baggies tested positive for marijuana. RP 146-48.

The state charged S.S., who was 16 years old at the time of the incident, with first degree unlawful possession of a firearm and possession of less than 40 grams of marijuana. CP 1-2. S.S. filed a motion to suppress the gun and marijuana. He contended first that the stop of the Honda and detention along the fence were unsupported by sufficient proof. CP 9-12. Second, S.S. argued LuBrant's frisk was not supported by a reasonable concern for officer safety. And third, S.S. maintained LuBrant exceeded the permissible scope of a protective frisk when he opened S.S.'s coat pocket and reached inside. CP 13-14; RP 126-34.

The trial court rejected each argument and denied the motion to suppress. CP 32-40; RP 141-44.⁴ The trial court concluded Officer Rodriguez lawfully stopped the Honda after hearing a report that a group of juveniles who had been fighting and drinking were in the car and leaving the trailer court. CP 38. Rodriguez lawfully ordered the youths out of the Honda and detained them because he provided sufficient factual support for an investigative detention. CP 39. The court concluded the frisk was reasonable because members of the group had allegedly been fighting and drinking and because the young men were posturing and

⁴ S.S. has attached the trial court's written findings of fact and conclusions of law as an appendix to this brief.

belligerent. CP 39. Finally, the court concluded LuBrant's intrusion into S.S.'s pocket was justified by his discovery of a hard, heavy object he believed could have been a weapon. CP 39.

The court went on to find S.S. guilty of each crime as charged. CP 40; RP 149. The court imposed a standard range disposition. CP 24-30; RP 161-68.

C. ARGUMENT

OFFICER LUBRANT'S FRISK OF S.S. FOR A WEAPON WAS UNCONSTITUTIONAL BECAUSE IT WAS NOT SUPPORTED BY A REASONABLE BELIEF S.S. WAS ARMED AND DANGEROUS.

Neither Officer LuBrant nor his colleagues articulated specific facts to justify a reasonable belief S.S. could be armed and dangerous as he stood along the fence line with the other youths. LuBrant's frisk was therefore unconstitutional and the gun and marijuana, as fruits of the unlawful search, must be suppressed.

An officer may frisk a lawfully detained vehicle passenger under article I, section 7 of the Washington Constitution⁵ only where there are specific, articulable facts to support an objectively reasonable belief the passenger could be armed and dangerous. State v. Glossbrener, 146

⁵ "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Wn.2d 670, 680, 49 P.3d 128 (2002) (citing State v. Horrace, 144 Wn.2d 386, 399-400, 28 P.3d 753 (2001); State v. Adams, 144 Wn. App. 100, 105, 181 P.3d 37, review denied, 164 Wn.2d 1033 (2008)). Similarly, the Fourth Amendment prohibits a limited pat-down search absent specific and articulable facts, along with reasonable inferences that flow therefrom, which reasonably warrant the intrusion. Terry v. Ohio, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); Horrace, 144 Wn.2d at 394.

Reasonable safety concerns must exist for the frisk and its scope is limited to its protective purpose. Terry, 392 U.S. at 29; State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009); Adams, 144 Wn. App. at 104. These safety concerns must be directed at the particular individual to be searched. Horrace, 144 Wn.2d at 398. A generalized suspicion cannot justify a frisk. State v. Sweet, 44 Wn. App. 226, 234, 721 P.2d 560 (1986). For example, a passenger may not be automatically subject to a frisk simply because the driver has been arrested, or because the car is stolen. Horrace, 144 Wn.2d at 398, Adams, 144 Wn. App. at 107.

Rather, something more is required, such as a driver's furtive gestures in the direction of the passenger. Adams, 144 Wn. App. at 105-07 (citing Horrace, 144 Wn.2d at 389-90); see State v. Williams, 102 Wn.2d 733, 740, 689 P.2d 1065 (1984) (police failed to justify belief

detainee was dangerous where he "made no furtive gestures or violent responses. He did not threaten the police nor did the facts of the alleged crime justify assuming that the suspect was armed or likely to harm the police."); State v. Galbert, 70 Wn. App. 721, 726, 855 P.2d 310 (1993) (frisk found to be unjustified: "Galbert did not ignore the officer's request to get down on the ground; he did not flee when the officer approached; and there is no evidence that his clothing could have facilitated concealing a weapon."); Sweet, 44 Wn. App. at 235 (frisk justified where accused was observed standing against a wall near a closed business in a somewhat isolated area at night, fled at the approach of the officers, ignored shouts to stop, started to turn when officer who had caught up to him ordered him to freeze, and dropped a ski mask when told to raise his hands).

When considering the facts of the above cases, this Court should conclude the officers in S.S.'s case unjustifiably frisked the youths. The complaint that caused the officers to act was that a group of youths who had been drinking and fighting was seen leaving a trailer park in a Honda automobile. There were no reports weapons were involved in the incident, injuries were sustained, or property was damaged. No physical descriptions were provided. And importantly, it was broad daylight – 1:03 p.m. Cf., State v. Glenn, 140 Wn. App. 627, 636, 166 P.3d 1235 (2007)

("We conclude that a credible report that a gun has been displayed from a vehicle justifies a search of that vehicle under the officer safety exception to article I, section 7 of our constitution."); State v. Miller, 91 Wn. App. 181, 185, 955 P.2d 810, 961 P.2d 973 (1998) (officer conducted reasonable frisk where his suspicion was based on suspect's attempt to flee, refusal to turn around and remove hands from pockets, time of night [3:45 a.m.], and surrounding high-crime area), review denied, 136 Wn.2d 1016 (1998); State v. Terrazas, 71 Wn. App. 873, 879, 863 P.2d 75 (1993) (Trooper's weapons search of car accused drove was not justified; that one passenger had blanket over his lap "may be explained by the fact it was a cold winter night[,] " all three occupants cooperated with trooper's commands, and none made nervous or furtive gestures or any statements that would lead to reasonable suspicion they were armed or dangerous).

Officer Rodriguez testified that although they outnumbered him seven to one, the youths complied with his order to get out of the car and line up along the fence. S.S. did not attempt to flee. Nor did he say or do anything to alarm Rodriguez. Instead, Rodriguez said, "I didn't have any problems with them." RP 50. He was closer to the side of the line of youths where S.S. stood and "didn't have any issues with the three or four"

youths he had direct contact with. RP 58. Rodriguez saw no remarkable behaviors or furtive movements. RP 54, 58.

Officer Guillermo observed each of the males assume a fighting stance. RP 69. He quickly narrowed his focus of attention, however, on the young man found in possession of the pepper spray canister. RP 69, 76. Guillermo also did not share his safety concerns related to the "fighting stance" with his colleagues. RP 77.

Finally, Officer LuBrant – the officer who frisked S.S. – did not see anyone in a fighting stance. Instead, when he arrived he "was told" only that "some people in the group were becoming belligerent towards the officers[.]" RP 91-92. He frisked S.S. because S.S. was closest to him; there was nothing specific about the youth's appearance or actions that drew LuBrant's attention. RP 105. After the officers decided to frisk everyone, they instructed the youths to turn away and place their hands on the fence. RP 72, 92. Only after that did S.S. position his body in such a way as to make it more difficult for LuBrant to frisk him. RP 92-93.

These circumstances did not support an objectively reasonable belief S.S. could have been armed and dangerous. In broad daylight at 1 p.m., four officers frisked seven compliant youths, four of whom were girls. No one tried to flee, no one wore bulky clothes that could facilitated

concealment of a weapon, and none were known to any of the officers. There were no reports that any weapons had been used during the alleged fight or argument. None of the officers attempted to determine whether the youths had done anything wrong before the frisk, such as speaking with them, trying to determine whether they had been drinking, or driving a witness by to do a "show up" identification. RP 50, 53, 102. Quite simply, there were not sufficient facts to support the officers' belief that S.S. could have been armed or dangerous. The frisk was therefore unconstitutional.

Evidence derived from an unlawful frisk must be suppressed. Adams, 144 Wn. App. at 107; see State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999) ("When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed."). In S.S.'s case, these fruits are the gun and the marijuana. They must be suppressed. Without this evidence, the state cannot prove S.S. guilty of either charge. This Court should therefore reverse the trial court's denial of S.S.'s motion to suppress and its adjudications of guilt and remand for dismissal with prejudice. State v. Armenta, 134 Wn.2d 1, 17-18, 948 P.2d 1280 (1997); State v. Hopkins, 128 Wn. App. 855, 866, 117 P.3d 377 (2005) ("Because the State's case

rested exclusively on the improperly seized evidence and his statements after the illegal stop, we vacate Hopkins' convictions and dismiss the charges with prejudice.").

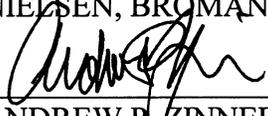
D. CONCLUSION

The facts were not sufficient to support an objectively reasonable belief that S.S. was armed and dangerous at the time Officer LuBrant frisked him and found a gun. The gun and marijuana discovered in the search incident to arrest for possession of the gun must be suppressed as fruits of the poisonous frisk. This Court should reverse the trial court's denial of the motion to suppress and adjudications of guilt and remand for dismissal with prejudice.

DATED this 28 day of September, 2010.

Respectfully submitted,

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APPENDIX

FILED
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JUN 29 2010
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

No. 09-8-04534-0

vs.

STOSH SATKOWSKI,
05/26/1993

Respondent.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THE ABOVE-ENTITLED CAUSE having come on for a suppression motion pursuant to CrR 3.6 and trial before the Honorable Judge Washington; the State of Washington having been represented by Deputy Prosecuting Attorney Angela Gianoli; the respondent appearing in person and having been represented by his attorney, Kari Boyum; the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

I.

The following events took place within King County, Washington:

1. On December 27, 2009, Federal Way Police Officers responded to investigate a call at Camelot Square trailer park in Federal Way, WA.

ORIGINAL

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- 1 2. Federal Way Police Officer Rodriguez received notification of the call via
2 dispatch. Dispatch advised that a reporting party had called 911 and reported a fight
3 involving 12 intoxicated, juvenile Hispanic males. Dispatch advised that the fight
4 occurred in the parking lot of the Camelot Square trailer park. Dispatched released a
5 follow-up report indicating that the individuals involved in the fight were leaving the
6 scene in a red Honda Civic, bearing license plate number 085SCO.
- 7 3. Officer Rodriguez does not recollect being given any further details of the fight,
8 but did hear that no weapons had been observed. He did hear that some of the 12
9 Hispanic males were drinking and under the age of 21, but was not provided with any
10 further physical description of the 12 Hispanic males.
- 11 4. As Officer Rodriguez responded to the Camelot Square trailer park he observed
12 the described vehicle driving towards the exit of the trailer park complex. Without
13 activating his lights or siren, Officer Rodriguez stopped the red Honda Civic, bearing
14 number 085SCO, in the middle of the mobile home parking lot by stopping his own
15 marked patrol vehicle in front of the Honda. Officer Rodriguez parked his vehicle in
16 this manner in order to stop the Honda.
- 17 5. Officer Rodriguez testified that he stopped the vehicle to determine if a crime had
18 occurred, and if anyone in the vehicle was associated with the crime. Provided the
19 information from the dispatch call, Officer Rodriguez wanted to further investigate a
20 potential assault, minors consuming alcohol and driving while under the influence.
- 21 6. Officer Rodriguez, who was in police uniform, approached the vehicle and
22 observed approximately 7 or 8 individuals inside the Honda Civic. The occupants
23 were a combination of both males and females.

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7. Officer Rodriguez ordered the occupants out of the vehicle so that he could watch each individual as he called for backup officers to assist with the investigation. Additionally, Officer Rodriguez testified that he ordered the occupants out of the vehicle based upon several officer safety considerations. First, the violent nature of the underlying dispatch assault call. Second, that the area in which he was dispatched is commonly associated with violence based calls. Third, the ratio of occupants in the car to number of officers, which was 7 or 8 to 1. Fourth, the fact that the officer was unable to view the occupants' hands and movements to ensure that none of them had a weapon either in their possession or within reach in the vehicle. Fifth, Officer Rodriguez expressed heightened safety considerations given the recent slayings of officers in both Seattle and Lakewood, Washington.
8. Officer Rodriguez testified that the street upon which his vehicle and the Honda were stopped did have traffic at that time of day. Officer Rodriguez stated that due to the traffic on the roadway, he felt the occupants of the vehicle would be more secure standing outside of the vehicle and away from the traffic on the roadway.
9. Officer Rodriguez noted some hesitance on the part of some of the individuals to exit the vehicle, but all exited the vehicle and otherwise complied with his request. Officer Rodriguez asked the occupants to stand near a fence, which was five to ten feet away from the parked Honda. The occupants obeyed this request. Officer Rodriguez told the occupants they were detained, but believed they were free to speak with each other. The occupants were not handcuffed.
10. Officer Rodriguez did not ask the occupants if they were involved in the reported fight. Officer Rodriguez did not know if the vehicle occupants were suspects,

1 witnesses, or victims of the fight. Officer Rodriguez indicated that he felt it would be
2 unsafe to confront each occupant individually without further officer assistance.

3 11. Officer Rodriguez did not initially observe any indication that any of the
4 occupants had been consuming alcohol, and did not observe any of the occupants
5 making any furtive movements. Once other officers arrived, Officer Rodriguez did
6 not observe the occupants exhibit any negative attitude. However, Officer Rodriguez
7 admits that once other officers arrived on scene he did not keep an eye on every
8 occupant.

9 12. It is standard practice to frisk individuals whom Officer Rodriguez contacts in the
10 course of his job, but due to officer safety concerns he did not frisk any of the
11 occupants until other officers arrived. Less than five minutes after the occupants
12 exited the vehicle, other officers began arriving at the Camelot Square Trailer Park.

13 13. Officer Guillermo also responded to the call involving the fight. Officer
14 Guillermo arrived first at the trailer, the site of the initial call, and then reported at the
15 scene of the parked Honda. When Officer Guillermo arrived on scene the vehicle
16 was already stopped.

17 14. Officer Guillermo noticed that the occupants were standing in a line at the fence.
18 Officer Guillermo did not observe any furtive movements from the occupants.
19 However, Officer Guillermo noticed that three of the males were standing in what he
20 terms a "fighting stance," which is a stance he associates with someone who may
21 become aggressive. This stance involves spread legs, arms slightly raised away from
22 waist, chin up and a glare. Officer Guillermo testified as to the officer safety
23 concerns associated with this particular stance. Officer Guillermo did not relay these

1 concerns to other officers, but these concerns did impact his desire to frisk the
2 individuals at the scene.

3 15. Officer Leigeb was another officer who arrived on scene. Prior to frisking the
4 occupants, Officer Guillermo observed Officer Leigeb recover pepper-spray from one
5 of the males in the line. The pepper-spray was being carried, in plain view, by one of
6 the male vehicle occupants. This male was not Mr. Satkowski.

7 16. Officer Lubrant similarly responded to the assault call at Camelot Square trailer
8 park. Officer Lubrant reported to the original location of the incident and spoke with
9 several people who overheard yelling and an argument. Officer Lubrant did not know
10 if one of the individuals was the 911 caller. The individuals stated that one of the
11 individuals involved in the altercation jumped over a nearby fence and the remaining
12 individuals left in a red Honda Civic. Based on his conversations with these people,
13 Officer Lubrant was not able to discern whether a physical fight had occurred.
14 Officer Lubrant radioed over dispatch that the individuals he had contacted were not
15 involved in the confrontation and that "no crime" had occurred. Officer Lubrant then
16 drove to the site of the stopped Honda.

17 17. As Officer LuBrant arrived at the site of the stopped red Honda immediately prior
18 to the frisk of all the vehicle's occupants. He observed the occupants standing near a
19 fence. Officer LuBrant recollected that some of the occupants were acting aggressive
20 and belligerent. The officer does not recall discussing the fight incident with the
21 other officers.

1 18. There was no show-up identification done with any of the witnesses at the scene
2 of the fight and the Honda occupants. None of the Honda occupants were questioned
3 about the incident, to the best of Officer Lubrant's knowledge.

4 19. Officer Lubrant recalled that the officers there had made the decision to frisk all
5 of the occupants. Officer Guillermo testified that the decision to frisk all of the
6 vehicle occupants was based upon the violent nature of the dispatch call, report of
7 intoxicated juveniles and the physical demeanor towards the officers.

8 20. Officer Lubrant approached Mr. Satkowski in order to frisk him because he was
9 nearest to where Officer Lubrant was standing. Officer Lubrant did not observe Mr.
10 Satkowski make any furtive movements. However, as Officer Lubrant approached
11 Mr. Satkowski he observed that Mr. Satkowski canted his right hip at an extreme
12 angle, meaning he was not standing with squared hips. The officer testified that it
13 appeared that Mr. Satkowski was attempting to place his right hip as far from Officer
14 Lubrant as possible. Officer Lubrant believed this to be a possible sign that Mr.
15 Satkowski had contraband on him.

16 21. Officer Lubrant secured Mr. Satkowski's hands, without handcuffs, and began a
17 frisk of Mr. Satkowski's outer clothing starting with his outer jacket. When the
18 officer got to Mr. Satkowski's jacket-pocket he felt a heavy object that could be used
19 as a weapon. In order to identify this item he unzipped the jacket pocket and
20 observed the barrel of a handgun. He reached in and took the object, which he
21 confirmed was a handgun. The handgun, a Taurus .38 special, was loaded with five
22 rounds.
23

1 22. Officer Lubrant placed Mr. Satkowski under arrest and searched his person
2 incident to arrest. Officer Lubrant recovered a Crown Royal bag inside Mr.
3 Satkowski's upper right jacket pocket, and inside the bag observed several small
4 plastic bags containing a green leafy substance that he believed to be marijuana. The
5 total amount of marijuana recovered was under 40 grams.

6 23. After the occupants had been frisked, Officer Rodriguez administered a portable
7 breath test to one of the occupants, Mr. Hernandez. This indicated that Mr.
8 Hernandez' blood alcohol level was .14.

9 24. The firearm recovered from Stosh was an operable firearm.

10 25. The green leafy substance tested positive as marijuana.

11
12 And having made those Findings of Fact, the Court also now enters the following:

13 CONCLUSIONS OF LAW

14
15 I.

16 The Court denies the Repondent's motion to suppress and dismiss based on the stop of
the vehicle:

17 a. Officer Rodriguez acted reasonably and lawfully in stopping the motor vehicle.
18 The officer responded to a report of what was said to be juveniles drinking,
19 fighting and leaving in a particular vehicle, bearing a defined license plate. The
20 officer was not only reasonable in stopping the vehicle, but also had a duty to stop
21 the vehicle that was reportedly associated with a 911 call of this nature.

22 II.

23 The Court further denies Respondent's motion to suppress and dismiss based on the
detention of the Respondent:

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a. The occupants of the vehicle were detained once the vehicle was stopped and the occupants requested to exit the vehicle. However, the officer was reasonable, under both Terry v. Ohio and State v. Mendez, in requesting the passengers exit the vehicle and to stand by the fence. The officer did not specifically observe the Respondent exhibiting physical indications of having consumed alcohol, but under Terry the officer acted reasonably in removing the individuals from the vehicle to further investigate any potential criminal activity once backup officers arrived. Likewise, the officer was reasonable under Mendez in articulating various officer considerations for removing the occupants from the vehicle.

III.

The Court further denies Respondent's motion to suppress and dismiss based on the frisk of the Respondent:

a. It was reasonable for the officers to frisk the all the vehicle occupants. The testimony was that the vehicle occupants had been previously fighting and drinking. Further, several officers indicated that the males were posturing, acting aggressive and belligerent. The officers acted reasonably in this situation, given the safety considerations, in frisking all the occupants for weapons.

IV.

The Court further denies Respondent's motion to suppress and dismiss based on Officer Lubrant's exceeding the scope of the frisk by reaching into the Respondent's jacket pocket:

a. Officer Lubrant's frisk of the respondents jacket revealed something hard, which due to the size and weight, the officer believed could have been a weapon. It was reasonable for Officer Lubrant to intrude upon the Respondent, by unzipping his outer jacket pocket, to determine whether he was carrying a weapon.

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III.

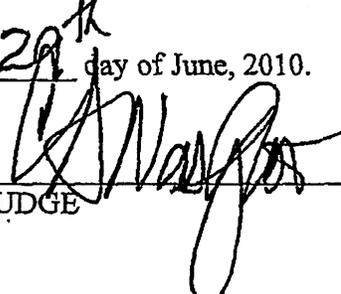
Upon denying defense motions, the Court finds the Respondent guilty of count I, Unlawful Possession of a Firearm in the First Degree as it finds: 1) Respondent has a serious offense conviction by stipulation of the parties, 2) the firearm was found in the Respondent's possession when it was found in his coat pocket, and 3) the firearm was operable by stipulation of the parties.

The Court finds the Respondent guilty of count II, Unlawful Possession of Marijuana less than 40 grams as it finds: 1) Respondent possessed less than 40 grams of marijuana as it was recovered on his person, 2) Respondent knowingly possessed the marijuana, 3) and the marijuana tested positive by stipulation of the parties.

IV.

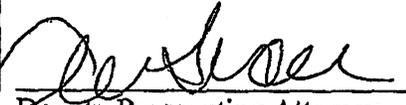
Judgment should be entered in accordance with Conclusion of Law III.

DONE IN OPEN COURT this 29th day of June, 2010.



JUDGE

Presented by:



Deputy Prosecuting Attorney
637

Respondent



Attorney for Respondent
Randall Hall for
Attorney of Record
KATZI Boyum

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 65475-6-1
)	
S.S.)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] S.S.
13509 37TH AVENUE S.
TUKWILA, WA 98168

SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*