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Court of Appeals No. 69913-0-I

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

STATE OF WASHINGTON,

Respondent,

v.

STEVEN SANDOZ,

Appellant.

On Appeal from the King County Superior Court
The Honorable Beth M. Andrus, Judge

BRIEF OF APPELLANT

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RULES, STATUTES AND OTHER (Cont'd)

A. ASSIGNMENTS OF ERROR

1. The trial court erred by denying appellant Steven Sandoz's motion to suppress evidence because the State failed to prove the police officer had reasonable suspicion to believe Sandoz was engaging in criminal activity at the time he detained him for investigation.

2. The trial court erred by making the following findings of fact in support of its denial because none of the findings is supported by substantial evidence:[1]

- The driver of the Jeep in question told the officer he received a call from Sandoz asking to be picked up at the apartment building at issue. CP 50 (FOF 8).
- Sandoz told the officer he was at the apartment to pay a resident money he owed. CP 51 (FOF 14).
- The pipe recovered from Sandoz had residue on it. CP 51 (FOF 14).
- One of the envelopes seized from Sandoz contained 7.3 grams of suspected cocaine, and the second contained 1.9 grams of suspected cocaine. CP 52 (FOF 21).
- The suspected cocaine tested positive for cocaine in a field test. CP 52 (FOF 22).

[1] A copy of the trial court's findings of fact (FOF) and conclusions of law (COL) is attached as Appendix A.

Issues Pertaining to Assignments of Error

1. A police officer observed Sandoz leave the apartment of a woman known to have drug-related convictions, saw Sandoz act surprised and nervous, heard conflicting stories from Sandoz and his friend as to why they were there, observed the friend slouch down in the seat of his parked Jeep as the officer drove by, and had the authority to trespass individuals who did not belong on the property. Were these circumstances sufficient to support a reasonable suspicion that Sandoz was engaging in criminal activity?

2. Were the trial court's challenged findings of fact in support of its denial of Sandoz's motion to suppress evidence proven by substantial evidence?

B. STATEMENT OF THE CASE[2]

SeaTac police officers regularly watched a particular six-unit apartment building on the southwest side of town because of the unusually high number of documented criminal incidents that occurred there. Four of the residents had drug-related convictions. 1RP 16-17.[3] The building

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[2] This factual recitation is based on testimony presented by the arresting officer during a combined hearing under CrR 3.5 and CrR 3.6.

[3] The verbatim report of proceedings is cited as follows: 1RP – 1/3/13; 2RP 1/7/13; 3RP -- 2/1/13.

owner gave police permission to cite anyone for trespass who did not belong on the property. 1RP 51-52, 57-58.

On a late May night, Officer Chris Przygocki drove by the building and observed a white Jeep parked in a no-parking space in front of the building. 1RP 16-18, 38. He knew each tenant as well as the type of car each had because he had been watching the building for about five months. 1RP 16-18. Przygocki had never seen the Jeep before and it did not belong to any of the residents. 1RP 58. As he drove by the Jeep, Przygocki observed the man in the driver's seat "slumped down." 1RP 18, 35-37. He drove past the Jeep, turned around, and parked his marked patrol car about 15 or 20 yards away. 1RP 14-15, 18-19.

Przygocki sat in his car and watched the Jeep, which did not move for 15 minutes. None of the three occupants left and no one came to the vehicle. 1RP 19. Przygocki decided to contact the occupants. He left his car, walked up to the Jeep's driver, and asked him what he was doing. 1RP 19-20. The driver said he was there because he had gotten a call from a friend. 1RP 20. Przygocki walked around to the passenger side of the Jeep and then saw Sandoz leave the apartment of a woman with a history of drug convictions. 1RP 17, 20. Sandoz had his head down and walked

toward the Jeep. When he looked up and saw Przygocki, Sandoz's "eyes got big" and he climbed into the Jeep. 1RP 21, 33, 48.

Przygocki asked him what was going on, and Sandoz replied his friend had given him a ride so he could collect $20 from the woman. Sandoz was visibly shaking, and his face looked pale and thin. 1RP 21. Przygocki became suspicious because Sandoz's explanation for being there contradicted the driver's. 1RP 21. So he asked Sandoz "if he would mind stepping outside the car and just talking with" him. 1RP 21-22. Sandoz complied and walked toward the rear of the Jeep. 1RP 22.

Had Sandoz refused, Przygocki said he would have detained him for investigation of or arrested him for drug-related loitering under the SeaTac municipal code. 1RP 42, 46, 50-52, 56-57.

Przygocki described Sandoz as an "honest" and "nice" person. 1RP 23. He again asked Sandoz what was going on. Sandoz said he was there to collect $20 from the woman inside the apartment. 22-23. After a bit more conversation, Sandoz admitted he had a drug problem and said he had a pipe in his pocket. 1RP 23-24, 59-60. He produced the pipe and Przygocki arrested him for possession of drug paraphernalia. 1RP 23-24.

In a search incident to arrest, Przygocki felt something in Sandoz's groin area. He then read Sandoz his rights. Sandoz said what Przygocki

felt was cocaine stored in two small envelopes concealed in his underwear. 1RP 24-27, 46-47, 53. He also claimed the woman in the apartment set him up. 1RP 26-27. Przygocki retrieved the envelopes. 1RP 26-27.

As Przygocki transported Sandoz to jail, Sandoz admitted he had a drug problem and asked for help. 1RP 28-29. He also mentioned he was "coming off" of narcotics. 1RP 29.

The State charged Sandoz with cocaine possession. CP 1-4. Sandoz moved to suppress his statements and the cocaine. CP 6-15. He contended he was seized from the moment Przygocki asked him to get out of the Jeep. CP 10-11. The seizure, Sandoz argued, was not supported by a reasonable suspicion of criminal activity. CP 12-15.

The trial court agreed Przygocki seized Sandoz when he asked him to exit the Jeep. CP 52-53; 1RP 101. Contrary to Sandoz's argument, however, the trial court held Przygocki had specific and articulable facts to support the seizure. 1RP 102. They were: extremely high rate of drug activity at the apartment; the woman who lived in the apartment from which Sandoz emerged was involved with drugs and had drug convictions; Przygocki was authorized by the building owner to trespass non-occupants who were loitering on the property; Przygocki did not recognize the Jeep; the driver appeared to try to hide when Przygocki drove by; the driver and

Sandoz gave differing explanations for their presence; and Sandoz appeared surprised when he saw Przygocki, was shaking and looked pale. CP 53-54; 1RP 102-03. The trial court denied Sandoz's motion to suppress evidence. CP 54.

The trial court also denied the motion to suppress statements. The court concluded Sandoz was not in custody when he admitted he had the pipe. The court also concluded all Sandoz's statements made after the advisement of his rights were admissible because Sandoz voluntarily waived his rights. CP 48; 1RP 103-04.

Sandoz waived his right to a jury trial and stipulated to a bench trial based on specified documentary evidence. CP 23, 26-28; 2RP 8-14. The trial court reviewed the evidence and found Sandoz guilty as charged. CP 41-43; 2RP 20-21. The court imposed a residential treatment-based drug offender sentencing alternative consisting of 24 months community custody and three months to six months of inpatient chemical dependency treatment. The court ordered Sandoz to stay out of the SeaTac anti-drug emphasis area. CP 29-37.

C. ARGUMENT

1. THE INVESTIGATIVE DETENTION WAS UNLAWFUL BECAUSE IT WAS NOT SUPPORTED BY EVIDENCE ESTABLISHING A SUBSTANTIAL POSSIBILITY THAT SANDOZ WAS ENGAGED IN CRIMINAL ACTIVITY.

Article I, section 7 of the Washington Constitution provides "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Unlike the Fourth Amendment, which precludes only "unreasonable" searches and seizures without a warrant, article I, section 7 prohibits any disturbance of an individual's private affairs "without authority of law," whether reasonable or unreasonable in the Fourth Amendment context. State v. Valdez, 167 Wn.2d 761, 771-72, 224 P.3d 751 (2009).

A warrantless search is per se unconstitutional under article I, section 7 unless it falls within an exception to the warrant requirement. State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004). "Exceptions to the warrant requirement are limited and narrowly drawn." State v. Parker, 139 Wn.2d 486, 496, 987 P.2d 73 (1999). The State always carries the "heavy burden" of proving a warrantless search is justified. State v. Jones, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002); State v. Ladson, 138 Wn.2d 343, 350, 979 P.2d 833 (1999). The showing must be by clear and

convincing evidence. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010).

One exception to the warrant requirement permits police officers to briefly stop and detain a person they reasonably suspect is engaged in criminal conduct. State v. Day, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007). There must be a substantial possibility of criminal activity. State v. Duncan, 146 Wn.2d 166, 179, 43 P.3d 513 (2002). This is commonly referred to as a "Terry" stop. Day, 161 Wn.2d at 895.[4] The facts justifying a Terry stop must be more consistent with criminal than with innocent conduct. State v. Pressley, 64 Wn. App. 591, 596, 825 P.2d 749 (1992). The State must establish the warrant exception by clear and convincing evidence. State v. Garvin, 166 Wash. 2d 242, 250, 207 P.3d 1266, 1270 (2009).

The trial court concluded Officer Przygocki effectuated a valid Terry stop when he asked Sandoz to step out of the Jeep. The question is whether the totality of the circumstances known to the officer supported his suspicion at that moment. State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991), overruled in part on other grounds by State v. Bailey, 109 Wn. App. 1, 3, 34 P.3d 239 (2000). This includes the officer's experience,

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[4] Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

the location of the detention, and the suspect's conduct. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). This is a legal question this Court reviews de novo. State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004).

Przygocki knew a rash of criminal activity had occurred at the apartment building, including possession of drugs with intent to deliver by the tenant of the apartment Sandoz departed. Presence in a high-crime area, even late at night, does not alone justify an investigative detention. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). As the Doughty Court held, police may not seize a person who visits a suspected drug house simply because he was there early in the morning and stayed only two minutes. 170 Wn.2d at 63; see also State v. Gleason, 70 Wn. App. 13, 18, 851 P.2d 731 (1993) (officers lacked reasonable suspicion to detain suspect merely because he was seen leaving an apartment complex where narcotics had been sold in the past, where suspect had never been seen there before, officers did not know what occurred inside the apartment, neither officer saw suspect involved in drug deal, and suspect was not acting suspiciously or carrying any unusual objects).

The driver of the Jeep slouched down when Przygocki drove by. That conduct may have contributed to a reasonable suspicion that the

driver was up to no good, but not Sandoz. Indeed, the driver had parked in a no-parking zone. Sandoz was not even in the car at the time. Even if he were, "mere proximity to others independently suspected of criminal activity does not justify" an investigative detention. State v. Thompson, 93 Wn.2d 838, 841, 613 P.2d 525 (1980).

Sandoz's eyes widened when he saw Przygocki and he was shaking. 1RP 40. Mere nervousness does not add to the reasonable suspicion calculus. See, e.g., State v. Barron, 170 Wn. App. 742, 754, 285 P.3d 231 (2012) ("We assume that many, if not most, people will react with a level of nervousness when they are arrested."); United States v. I.E.V., 705 F.3d 430, 438 (9th Cir. 2012) (citing cases). Nervousness, however, has been recognized as a pertinent factor in determining reasonable suspicion when it suggests evasiveness. Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). Sandoz did not try to evade Przygocki or attempt to hide anything. Furthermore, it was 11:30 p.m. and dark outside when Sandoz lifted his head and saw Przygocki standing next to an illegally parked vehicle he needed to get into. 1RP 14, 38-39. Under those circumstances, Sandoz had legitimate reason to be nervous and surprised.

Przygocki further relied on the fact the driver of the Jeep and Sandoz provided conflicting explanations for why they were there. The "conflict," if there was one, was not material. The driver said he was there "because he received a phone call from one of his friends." 1RP 20. Sandoz said the driver had given him a ride to collect a debt from the woman in the apartment. 1RP 21, 23. Both events could have been true. The driver merely said he received a phone call from Sandoz. He did not say when or from where. Sandoz may have called his friend from home and asked for a ride to and from the apartment building.

Furthermore, the trial court found that after stepping out of the Jeep upon request, Sandoz told Przygocki he went into the apartment to pay the woman back. CP 51 (FOF 14). This is not supported by the evidence. Przygocki twice during his testimony said Sandoz explained he was at the apartment to get money from the resident. 1RP 23, 59. "A trial court's erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal." State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). For these reasons the explanations did not conflict and did not add to reasonable suspicion.

Przygocki also noted he had authority from the building owner to identify and remove persons who did not belong on the property, knew

none of the tenants drove a Jeep, and had never seen the Jeep there. 1RP 51, 58, 60-61. He ended up trespassing each of the three occupants of the Jeep as well as Sandoz, but not until after arresting him for cocaine possession. 1RP 43-44, 60.

A brief discussion of State v. Little is in order at this point. In Little, police officers were dispatched to the Lakeshore Village Apartments to investigate a report of a group of juveniles loitering on the grounds of the apartment complex. 116 Wn.2d 488, 496, 806 P.2d 749 (1991). Management of the multiunit complex routinely experienced problems with drug and gang activity. Management encircled the complex with a fence topped with concertina wire and posted signs prohibiting trespassing or loitering throughout the complex. Little, 116 Wn.2d at 490. The management also had an agreement with the Seattle Police Department to investigate persons suspected of being trespassers. Id.

A responding officer observed several juveniles in the complex, all of whom ran off upon seeing the police. One of them, Little, refused to heed an officer's command to stop, and instead ran inside an apartment and attempted to close the door in the face of the pursuing officer. The officer kept the door open and arrested Little for obstruction. Little, 116 Wn.2d at

496. Little was ultimately found guilty of obstruction and trespassing. Little, 116 Wn.2d at 493.

He appealed his convictions and challenged the legality of the police order to stop. Id. at 495. The Supreme Court held the circumstances known to the officer, the trespass investigation agreement, the report of loitering juveniles, the many posted signs warning against loitering, and Little's flight, were sufficient to justify the investigative detention. Id. at 496.

As the Little Court held, the trespass agreement was a factor supporting the officer's reasonable suspicion, but did not itself justify the detention. In contrast to Little, Sandoz did nothing inherently suspicious before he was seized. Furthermore, Przygocki did not recognize Sandoz, his cohorts, or their vehicle and therefore had no reason to suspect they had been told to stay away from the property. 1RP 58. Finally, Przygocki saw Sandoz emerge from a resident's apartment after seeing no one enter or leave the Jeep for 15 minutes. The reasonable inference was that Sandoz visited the apartment resident for that period of time. Visiting the resident of an apartment under these circumstances can hardly be considered "trespassing."

Przygocki also testified he believed he had seen enough to detain or arrest Sandoz for drug-related loitering under the SeaTac Municipal Code (STMC). 1RP 46, 56-57. The provision, STMC § 8.05.380(C), makes it unlawful to "loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the intent to engage in drug-related activity contrary to any of the provisions of Chapter 69.41, 69.50, or 69.52 RCW." Appendix B.

"Loiter" is not defined in the STMC or the Revised Code of Washington. There are several dictionary definitions, the most pertinent of which is "to remain in or near a place in an idle or apparently idle manner: hang around aimlessly or as if aimlessly." Webster's Third New International Dictionary 1331 (1993). Sandoz did not loiter; he remained inside the apartment and out of Przygocki's view. When he emerged from the apartment, he approached and entered the Jeep. He did not act "in a manner and under circumstances manifesting the intent to engage in drug-related activity." Przygocki may have believed he had a reason to detain Sandoz for drug traffic loitering, but his belief was mistaken. The existence of a drug-related loitering ordinance was not relevant to determining the propriety of the detention.

Considered individually and collectively, the circumstances presented to Przygocki at the time he asked Sandoz to get out of the Jeep did not support a reasonable suspicion of criminal activity. His eventual discovery of cocaine was thus unlawful. The cocaine must be suppressed. See Duncan, 146 Wn.2d at 176 ("The exclusionary rule mandates the suppression of evidence gathered through unconstitutional means."). Without the seized evidence, the state cannot sustain the charge. This Court should therefore reverse the trial court's denial of Polk's motion to suppress, reverse the conviction, and remand for dismissal with prejudice. State v. Armenta, 134 Wn.2d 1, 17-18, 948 P.2d 1280 (1997).

2. THE OFFICER DID NOT HAVE PROBABLE CAUSE TO "ARREST" SANDOZ FOR POSSESSION OF DRUG PARAPHERNALIA BECAUSE MERE POSSESSION IS NOT A CRIME.

The trial court found Przygocki arrested Sandoz for "Possession/Use of Drug Paraphernalia" and that the search of Sandoz's person was incident to arrest. CP 51 (FOF 15). The court concluded Przygocki had probable cause to arrest Sandoz for Use/Possession of Drug Paraphernalia. CP 54 (COL (d)). Possession of drug paraphernalia is not a crime, and Przygocki did not see Sandoz use paraphernalia in his presence. Przygocki's arrest was therefore unlawful.

Possession of drug paraphernalia is not a crime. State v. Rose, 175 Wn.2d 10, 19, 282 P.3d 1087 (2012); State v. O'Neill, 148 Wn.2d 564, 583-84 n.8, 62 P.3d 489 (2003); State v. Neeley, 113 Wn. App. 100, 107, 52 P.3d 539 (2002). While use of drug paraphernalia is a misdemeanor, RCW 69.50.412(1), Sandoz did not use the pipe found in his pocket in Przygocki's presence. Przygocki therefore could not have arrested Sandoz for possessing the pipe. RCW 10.31.100; O'Neill, 148 Wn.2d at 583-84 n.8. See State v. Ortega, 177 Wn.2d 116, 124, 297 P.3d 57 (2013) (officer who was not present when Ortega committed acts that established probable cause to arrest him for drug-traffic loitering had no lawful authority to arrest Ortega). Cf., Neeley, 113 Wn. App. at 108 (combined facts of Neeley's presence in a parked car at 2 a.m. in an area known for high rates of drug and prostitution activity, with her head "bobbing up and down as if she was ingesting or concealing something," and drug paraphernalia lying on the passenger seat, raised reasonable inference that she used paraphernalia to ingest a controlled substance).

Because Przygocki could not lawfully arrest Sandoz for possession of paraphernalia, he could not search him "incident to arrest," as the trial court found. CP 51 (FOF 15). Instead, the search of Sandoz's person could not exceed that of a protective frisk for weapons. An officer may

briefly frisk a suspect for weapons during an investigative detention only if he reasonably believes his safety or that of others is at risk. State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009). Przygocki had no such belief; he said he had no fear of his life or that of others when contacting Sandoz. 1RP 23. The pat-down frisk that revealed "an object" in Sandoz's groin area – small envelopes containing cocaine – was therefore not justified.

The State may argue there was probable cause under Rose to arrest Sandoz for possession of cocaine because of residue found on the pipe. The Rose Court held the circumstances of the stop and arrest reflected the officer "had a plain view of a glass pipe, with a white residue inside, that in his training and experience he suspected were consistent with drug possession." Rose, 175 Wn.2d at 22. Therefore, although the officer mistakenly arrested Rose for possession of the pipe, the arrest remained lawful because the presence of the residue gave the officer probable cause to arrest for drug possession.

This Court should reject such a claim. The trial court found Sandoz's pipe "had residue on it." CP 51 (FOF 14). Przygocki did not testify during the suppression hearing that he observed residue on the pipe.

The court's finding is thus not supported by the evidence. This Court is therefore not bound to the finding. Hill, 123 Wn.2d at 647.

The State may argue Przygocki arrested Sandoz for possessing drug paraphernalia under the STMC. Section 8.05.380(B), unlike its state law companion, prohibits not only the use of paraphernalia but also possession with intent to use. The State may assert the evidence supported a reasonable inference Sandoz intended to use the pipe to inhale a controlled substance.

This Court should reject such a claim. Przygocki did not state the arrest was based on the local ordinance and did not refer to the provision. He instead referred to the ordinance only with regard to the drug-related loitering provision. The trial court also did not find or conclude the arrest was based on the STMC.

The evidence resulting from the unconstitutional detention must be suppressed. Doughty, 170 Wn.2d at 65. Without the seized evidence, the State cannot sustain the charge. This Court should therefore reverse the trial court's denial of the motion to suppress, reverse the conviction, and remand for dismissal with prejudice. Armenta, 134 Wn.2d at 17-18.

D. CONCLUSION

For the aforesaid reasons, this Court should reverse the trial court's denial of Sandoz's motion to suppress evidence and remand the cause with an order to dismiss the conviction with prejudice.

DATED this 5 day of August, 2013.

Respectfully submitted,

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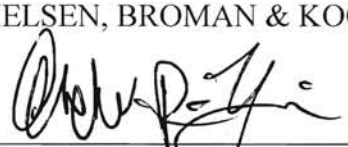

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APPENDIX A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. STEVEN PAUL SANDOZ, Defendant,	No. 12-1-05007-1 KNT WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO SUPPRESS PHYSICAL, ORAL OR IDENTIFICATION EVIDENCE

A hearing on the admissibility of physical, oral, or identification evidence was held on January 3, 2013, before the Honorable Judge Beth Andrus. After considering the evidence submitted by the parties and hearing argument, to wit: the testimony of King County Sheriff Deputy Christopher Przygocki,

the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

FINDINGS OF FACTS:

1. On May 23, 2012, at around 11:30 p.m., King County Sheriff Deputy Christopher Przygocki was working on a King County Sheriff Department Problem Solving Project at 19278 11 Pl. S., Seatac, Washington. The deputy was working as a contracted City of Seatac officer for KCSO at this time.

2. Deputy Przygocki was sitting in his marked patrol vehicle, without a partner, acting as a presence at this particular problem solving area to stop drug activity. The deputy was outfitted with his usual department issued uniform, ~~indicting~~ indicating he is a police officer. The

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area the deputy was in was deemed a problem solving area due to reported criminal activity, through 911 calls and investigations of narcotics and vehicle thefts.

3. Deputy Przygocki is particularly familiar with this area and specifically this complex as it is a known high crime area, including being known for the sale and possession of narcotics, stolen vehicle activity, and other criminal activities. The deputy had written authority by the owner of this private apartment complex to trespass non-occupants at the complex, if there was a legitimate basis.

4. Deputy Przygocki has documented different vehicles coming and going from this complex. The deputy is familiar with the tenants of this complex and the vehicles they own or drive.

5. Deputy Przygocki is familiar with one of the tenants of the complex, Jennifer Meadows. Meadows has a history of VUCSA and VICE convictions and the deputy has viewed at least sixty different people coming and going from this complex.

6. Deputy Przygocki was seated in his patrol car when he observed a White Jeep Grand Cherokee parked in a handicap/no parking lane directly in front of the problem solving project apartment complex. The deputy knew that none of the tenants owned the Jeep and he had never seen the Jeep at the complex before.

7. Deputy Przygocki drove past the Jeep and saw three males inside the vehicle. The deputy noticed one of the males slouch down, when he drove past the vehicle.

8. Deputy Przygocki parked his patrol car and watched the vehicle for approximately 15 minutes. After none of the occupants left the vehicle and none got into the vehicle, the deputy approached the vehicle on foot. The deputy did not activate his overhead lights or block the vehicle. The deputy talked to the occupants of the vehicle and asked them what they were doing. The driver of the vehicle, Daniel Cain, indicated he received a call from Steven Sandoz, the defendant, who asked him to pick him up at this apartment.

9. Deputy Przygocki then walked to the passenger side and was talking to the passenger occupant, when he saw the defendant exit Meadows apartment. When the defendant saw the officer, the defendant's eyes widened in apparent surprise. The defendant got into the backseat of the vehicle. The deputy did not impede the defendant from entering the vehicle.

10. Deputy Przygocki contacted the defendant, while the defendant was seated in the vehicle. The defendant was visibly shaking and pale. The deputy asked what was up and the defendant indicated that he received a ride from Cain to Meadows apartment because Meadows owed him money. The deputy told the defendant that Cain told him something different. The defendant began to look around and had visible body shakes.

11. Deputy Przygocki asked to speak to the defendant privately and the defendant agreed. The defendant exited the vehicle and they both walked a few feet behind the jeep. The

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deputy did not order the defendant out of the vehicle or attempt to touch his weapon, as he had no safety concerns with the defendant. The deputy was the only law enforcement officer present.

12. Deputy Przygocki's demeanor during this contact was calm and even toned.

13. Deputy Przygocki believed this contact was voluntary, but also believed that had the defendant chose to not speak to the deputy privately, he had both reasonable suspicion to investigate and probable cause that the defendant was committing a violation of the ordinance of Drug Traffic Loitering, under the Seatac Municipal Code.

14. Outside the vehicle, Deputy Przygocki asked the defendant why the stories between him and Cain were different. The defendant stated he was actually at Meadows apartment to pay her back. The defendant then volunteered the information that he has a drug problem and he had a crack pipe on him. The deputy asked to retrieve the pipe and the defendant stated "yes." Deputy Przygocki removed a pipe from the defendant's pants pockets; the pipe had residue on it.

15. The defendant was not free to leave after the pipe was located and the defendant was placed under arrest for Possession/Use of Drug Paraphernalia. Search incident to arrest, the deputy felt two objects that seemed like rolled up paper and seemed to be underneath the defendant's jeans. The defendant dropped his head when those items were felt.

16. Deputy Przygocki read the defendant his Miranda Rights. The defendant stated he understood his rights. The defendant then told the officer that the object the officer was feeling was cocaine hidden in his underwear. The defendant stated there were two envelopes and cocaine was in one of the envelopes.

17. Deputy Bartolo then arrived on scene and watched as Deputy Przygocki removed the cocaine from Sandoz's underwear. The defendant indicated that there should be about 5 grams of cocaine in the envelopes. The defendant stated he purchased the cocaine from Meadows and said that Meadows must have set him up since the deputy was waiting outside the apartment. The defendant would not give a written statement about where he purchased the cocaine because he had "integrity," but the defendant did admit to having a drug problem.

18. The defendant made no furtive movements or attempts to hide the suspected cocaine when he was being searched.

19. Deputy Przygocki asked the defendant if there was anything in the Jeep the defendant would like retrieved. The defendant stated he had a black travel bag in the Jeep, but he did not want it. The defendant confessed that the bag was his but that there was probably more drugs, heroin, in the bag. The defendant stated that he did not know which pocket the heroin was in or if it was still in there, but last time he checked there was heroin in the bag.

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20. After Deputy Przygocki transported the defendant to Seatac City Hall for booking, the defendant told the deputy he was cold and would be coming off of narcotics. The deputy searched that bag at City Hall and located the following: 2.8 grams of suspected heroin in a small baggy, a burnt spoon, smoking pipe, digital scale, rubber tube, and hypodermic needles.

21. One of the envelopes located in the defendant's underwear contained a clear plastic baggy containing 7.3 grams of suspected cocaine. The second envelope contained 1.9 grams of suspected cocaine; it was not in a plastic baggy.

22. The suspected cocaine that was located in envelopes in the defendant's underwear was field tested and was positive for cocaine.

23. Deputy Przygocki's testimony was credible.

CONCLUSIONS OF LAW

I.

a. The initial encounter, where the deputy approached the defendant on foot while the defendant was an occupant in a parked vehicle, was merely a social contact, as under State v. O'Neil, 148 Wn.2d 564, the defendant was essentially a pedestrian and no show of authority or restraint on liberty had been placed on the defendant. Under an objective analysis, a reasonable person would feel free to leave given the actions of the deputy, up to this point. Even though the deputy had some suspicions when he approached the defendant, the test is not the subjective mindset of the deputy, but rather whether a reasonable person would feel free to leave;

b. The encounter with the defendant became a Terry stop, requiring reasonable and articulable suspicion, once the officer asked the deputy to talk in private at the back of the car. Since the deputy ~~believed~~ testified that he ~~had probable cause~~ would have arrested the defendant for Drug Traffic Loitering if the defendant refused to speak to him at this point, a reasonable person would have felt compelled to

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comply with the officers request to talk to the defendant in private outside of the vehicle;

c. The deputy had reasonable and articulable suspicion to conduct a Terry stop of the defendant, when he asked to talk to the defendant privately at the back of the vehicle. The area that this occurred was an area of extremely high drug activity, known to the officer based on objective 911 calls reporting drug activity and investigations into drug dealing. The deputy was aware that occupants of the apartment complex, specifically the one apartment the defendant exited, was known as a place where drug deals occurred. Unlike in State v. Dougherty, 170 Wn.2d 57 (2010), the deputy in this case had knowledge that the specific apartment the defendant exited was occupied by a known drug dealer, Meadows, who had numerous VUCSA convictions, including convictions for possession with intent to deliver narcotics. The deputy had express authority from the complex owner people to trespass people who were non-occupants loitering at the complex. The Jeep seen did not belong to any occupants of the complex. The driver of the Jeep slouched down when the deputy drove past. The driver and the defendant had conflicting stories as to why they were in the area. The defendant looked surprised when he saw the deputy. The defendant was visibly shaking and pale when the deputy initiated contact with him. At this point, the deputy had reasonable and articulable suspicion ~~to detain the defendant for Drug Traffic Loitering, under the Seatac Municipal Code~~ investigate that the defendant was engaging in illegal drug activities;

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d. The deputy had probable cause to arrest the defendant for Use/Possession of Drug Paraphernalia, once the "crack" pipe was located and completed a valid search incident to arrest after that.

II.

The deputy's contact with the defendant was initially a social contact. Once the deputy asked the defendant to speak privately, the contact became a Terry stop. Once the contact became a Terry stop, the deputy had reasonable and articulable suspicion to briefly detain the defendant. The defense motion to suppress evidence is denied.

III.

Judgment should be entered in accordance with Conclusion of Law II. In addition to these written findings and conclusions, the court hereby incorporates its oral findings and conclusions as reflected in the record.

Signed this 1ST day of FEB, 2013.

Beth M Andrus
JUDGE Beth M. Andrus

Presented by:

Kelsey Scharman, WSBA#41684
Deputy Prosecuting Attorney

Approved as to form

George Sjursen, WSBA#28682
Attorney for Defendant

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APPENDIX B

(Ord. 90-1029 § 70)

8.05.380 Controlled substances.

A. The following sections of RCW Title 69 now in effect, and as may subsequently be amended, are hereby adopted by reference to establish regulations and crimes regarding controlled substances under the SeaTac Criminal Code:

69.50.101 Definitions.
69.50.401(e) Possession of forty grams or less of marihuana a misdemeanor.
69.50.420 Violations – Juvenile driving privileges.
69.50.505 Seizure and forfeiture.

B. Possession of Drug Paraphernalia. It is unlawful for any person to use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, as defined by this chapter and Chapter 69.50 RCW, as now or hereafter amended.

Possession of drug paraphernalia shall be a misdemeanor.

C. Drug-Related Loitering.

1. It is unlawful for any person to loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the intent to engage in drug-related activity contrary to any of the provisions of Chapter 69.41, 69.50, or 69.52 RCW.

2. Among the circumstances which may be considered in determining whether such intent is manifested are:

a. Such person is a known unlawful drug user, possessor, or seller. For purposes of this chapter, a "known unlawful drug user, possessor, or seller" is a person who has been convicted in any court within this state of any violation involving the use, possession, or sale of any of the substances referred to in Chapters 69.41, 69.50, and 69.52 RCW, or substantially similar laws of any political subdivision of this state or of any other state; or a person who displays physical characteristics of drug intoxication or usage, such as "needle tracks"; or a person who possesses drug paraphernalia as defined in subsection B of this section;

b. Such person is currently subject to an order prohibiting his/her presence in a high drug activity geographic area;

c. Such person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is then engaged in an unlawful drug-related activity, including by way of example only, such person acting as a "lookout";

d. Such person is physically identified by the officer as a member of a "gang," or association which has as its purpose illegal drug activity;

e. Such person transfers small objects or packages for currency in a furtive fashion;

f. Such person takes flight upon the appearance of a police officer;

g. Such person manifestly endeavors to conceal himself or herself or any object which reasonably could be involved in an unlawful drug-related activity;

h. The area involved is by public repute known to be an area of unlawful drug use and trafficking;

i. The premises involved are known to have been reported to law enforcement as a place suspected of drug activity pursuant to Chapter 69.52 RCW;

j. Any vehicle involved is registered to a known unlawful drug user, possessor, or seller, or person for whom there is an outstanding warrant for a crime involving drug-related activity.

Unlawful drug loitering shall be a gross misdemeanor.

D. Designation of Anti-Drug Emphasis Area. The following described areas of the City are designated to be anti-drug emphasis areas and enhanced penalties shall be applied in event of conviction of any controlled substance violations, possession of drug paraphernalia or drug loitering within the said areas, pursuant to this section, in order to assure elimination of all drug-related activity within these areas:

1. An area coterminous with SR-99 from the intersection thereof with South 216th Street, as a southerly boundary, to the intersection thereof with South 152nd Street, as a northerly boundary, and extending for three (3) blocks to the east of the easterly margin of SR-99 along the said length thereof and extending for three (3) blocks to the west of the westerly margin of SR-99 along the said length thereof.

2. An area coterminous with Military Road South from the intersection thereof with SR-99, as a southerly boundary, to the intersection thereof with South 128th Street, as a northerly boundary, and extending for three (3) blocks to the east of the easterly margin of Military Road South along the said length thereof, and extending for three (3) blocks to the west of the westerly margin of Military Road South along the said length thereof.

3. An area coterminous with South 200th Street from the intersection thereof with Des Moines Memorial Drive, as a westerly boundary, to the intersection thereof with 32nd Avenue South, as an easterly boundary, and extending for three (3) blocks to the south of the southerly margin of South 200th Street along the said length thereof and extending for three (3) blocks to the north of the northerly margin of South 200th Street along the said length thereof.

4. An area conterminous with South 188th Street from the intersection thereof with the Alaska Service Road, as a westerly boundary, to the intersection thereof with Military Road South, as an easterly boundary, and extending for three (3) blocks to the south of the southerly margin of South 188th Street along the said length thereof, and

extending for three (3) blocks to the north of the northerly margin of South 188th Street along said length thereof.

5. An area coterminous with South 176th Street from the intersection thereof with SR-99, as westerly boundary, to the intersection thereof with 40th Avenue South, as an easterly boundary, and extending for three (3) blocks to the south of the southerly margin of South 176th Street along the said length thereof and extending for three (3) blocks to the north of the northerly margin of South 176th Street along said length thereof.

6. An area coterminous with South 172nd Street from the intersection thereof with 31st Place South, as a westerly boundary, to the intersection thereof with Military Road South, as an easterly boundary, and extending along said length thereof.

7. An area coterminous with South 162nd Street from the intersection thereof with 32nd Avenue South, as a westerly boundary, to the intersection thereof with Military Road South, as an easterly boundary, and extending along said length thereof.

8. An area coterminous with South 208th Street, the intersection thereof with 24th Avenue South, as a westerly boundary, to the intersection thereof with Interstate Highway 5, as the easterly boundary, and extending along said length thereof.

9. An area coterminous with 204th Street from its intersection with the boundary of the Port of Seattle property, as a westerly boundary, to the intersection thereof with Interstate Highway 5, as an easterly boundary, and extending along said length thereof.

10. An area coterminous with South 192nd Street from the intersection thereof with the boundary of the Port of Seattle property, as a westerly boundary, to the intersection thereof with Interstate Highway 5, as an easterly boundary, and extending along said length thereof.

11. An area coterminous with South 180th Street from the intersection thereof with 32nd Avenue South, as a westerly boundary, to the 3600 block area of South 180th Street, as easterly boundary, and extending along said length thereof.

12. An area coterminous with South 150th Street from the intersection thereof with 22nd Avenue South, as a westerly boundary, to the intersection thereof with Military Road South, as an easterly boundary, and extending along said length thereof.

13. An area coterminous with South 146th Street from the intersection thereof with 16th Avenue South, as a westerly boundary, to the intersection thereof with Military Road South, as an easterly boundary, and extending along said length thereof.

14. An area coterminous with Military Road from the intersection thereof with the southerly boundary of the city limits, as a southerly boundary, to the intersection thereof with the northerly boundary of the city limits, as a northerly boundary, and extending along said length thereof.

15. An area coterminous with Des Moines Memorial Drive from the intersection

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

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 69913-0-I
	)	
STEVEN SANDOZ,	)	
	)	
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 5TH DAY OF AUGUST, 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] STEVEN SANDOZ
NO. 213012664
KING COUNT JAIL / RJC
620 W. JAMES STREET
KENT, WA 98032

SIGNED IN SEATTLE WASHINGTON, THIS 5TH DAY OF AUGUST, 2013.

X Patrick Mayovsky