69892-3

NO. 69892-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY CRAIG LEE,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

MR. LEE'S GUILTY PLEA TO CRIMINAL SOLICITATION WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW

a. The court undermined the voluntariness of Mr. Lee's guilty plea when it improperly urged Mr. Lee to plead guilty.

Anthony Lee was charged with possession with intent to deliver cocaine. CP 6. Mr. Lee moved to suppress the evidence against him, including the cocaine found on his person and his statements to law enforcement, but his motions were denied. 10/16/12 RP 72. After extraordinary intervention by the trial court, Mr. Lee accepted the State's offer to plead to criminal solicitation. 10/16/12 RP 223. In its response, although the State claims the court did not pressure Mr. Lee into pleading guilty, it acknowledges this intervention when it argues "the court may have pressured the State to offer a reduction of the charge." Resp. Br. at 11.

Trial judges are required "to refrain from offering defendants any advice, direct or implied, about the wisdom of pleading guilty." State v. Watson, 159 Wn.2d 162, 165, 149 P.3d 360 (2006). While the trial court did not explicitly tell Mr. Lee that he should plead guilty, by

pressuring the State to extend a plea offer, discussing that plea offer with Mr. Lee in great detail, and warning Mr. Lee that things frequently "go badly" for defendants who elect to go to trial, the court implied Mr. Lee should accept the offer. 10/16/12 RP 202, 217-18, 225.

A trial court's participation in plea negotiations may render a guilty plea involuntary. State v. Wakefield, 130 Wn.2d 464, 473, 925 P.2d 183 (1996). The State contends that Wakefield is distinguishable from Mr. Lee's case because in Wakefield, the trial court did not advise the defendant to plead guilty or promise a particular sentence if he pled guilty. Resp. Br. at 17. However, although in Wakefield the court urged the defendant to follow her attorney's advice regarding the plea offer, here the trial court repeatedly highlighted both the benefits of accepting the plea bargain and the risk of going to trial.

First, the judge questioned the State about an available plea offer and instructed the prosecuting attorney to relay a message to her superiors and find out whether the State could present a new offer to Mr. Lee. 10/16/12 RP 202. The judge commented that the offer made prior to trial was still fair, and reminded the State of an instance in which it had expressed regret at not extending an offer to a defendant after losing at trial. 10/16/12 RP 201-203.

When the State returned with an offer, the judge explained the deal to Mr. Lee at great length, comparing the possible sentences and emphasizing the worst case scenario if Mr. Lee lost at trial. 10/16/12 RP 217-18. It discussed the effect of "good time" on the sentence and the possibility of a DOSA. 10/16/12 RP 218. Only when defense counsel expressed discomfort with the judge's remarks, explaining that he was careful not to give any assurances about calculations involving "good time" when explaining offers to clients, did the judge acknowledge there were "no guarantees." 10/16/12 RP 224.

The State argues that, when considered in context, the judge's statement that "frequently things go wrong, a conviction comes up, things go badly" and the defendant wishes he had accepted the State's offer, was simply an expression of the judge's experience and an "accurate warning" to Mr. Lee regarding his options. 10/16/12 RP 225; Resp. Br. at 15. However, when a judge's experience and warnings serve to imply that a defendant should accept a plea offer, as they did here, those remarks undermine the voluntariness of the plea. Watson, 159 Wn.2d at 165. Ms. Lee's case must be remanded so that Mr. Lee has the opportunity to withdraw his guilty plea.

b. Because Mr. Lee was not informed, and did not understand, that he was relinquishing his constitutional right to appeal the denial of his motions to suppress, his plea was not voluntary.

At the time a plea is entered, the defendant must be informed of all direct consequences of the plea. In re Personal Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004); State v. Ross, 129 Wn.2d 279, 284, 916 P.3d 405 (1996). A court determines whether a plea if voluntary based on the totality of the circumstances. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). Here, the totality of the circumstances shows Mr. Lee's plea was not voluntary because he did not understand he was waiving his right to challenge the court's denial of his motions to suppress.

The State claims there is nothing in the record demonstrating "any confusion" by Mr. Lee that pleading guilty precluded him from appealing the court's rulings. Resp. Br. at 18. It compares this case to State v. Smith, in which defense counsel specifically noted, incorrectly, that the defendant reserved his right to appeal the court's ruling on the pre-trial motion despite entering a plea agreement. 134 Wn.2d 849, 853, 953 P.2d 810 (1998). Because of this misunderstanding, the court

reversed to allow the defendant the opportunity to withdraw his guilty plea. Id. at 854.

Here there was no explicit statement on the record that Mr. Lee believed he could appeal the court's denial of his motions to suppress. However, that Mr. Lee failed to understand he was forever giving up this right is not a "bare assertion" as the State alleges. Resp. Br. at 22. The record demonstrates Mr. Lee was largely preoccupied with the outcome of the suppression hearings during both the discussion of the State's offer and when he later moved to withdraw his plea. 10/16/12 RP 218; 1/17/13 RP 12, 16-17. He repeatedly questioned why the motions were denied, and expressed dissatisfaction with the proceedings. 10/16/12 RP 218-222; 1/17/13 RP 12, 16-17.

The State relies on the judge's statement, during the hearing on Mr. Lee's motion to withdraw, that "[b]y entering the plea, you gave up your right to object to the findings on the 3.6. You could have appealed that." 1/17/13 RP 26; Resp. Br. at 20. It argues that if Mr. Lee had not understood this when he pled, he should have spoken up in response to the judge's comment. Resp. Br. at 20. However, this was one statement among lengthy oral findings the trial court made when denying Mr. Lee's motion, and when Mr. Lee had previously attempted

to interject, the court instructed him that his turn to speak had ended. 1/17/13 RP 25, 26. Thus, Mr. Lee's silence was at the direction of the court.

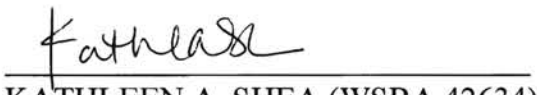
The totality of the circumstances show that Mr. Lee was very concerned about the court's ruling on his motions to suppress and believed them to be improper. Mr. Lee's guilty plea cannot be found voluntary when he was not informed, and demonstrated no understanding, that he was waiving all objections to the court's rulings on his motions to suppress. His case must be remanded so that Mr. Lee has the opportunity to withdraw his guilty plea.

B. CONCLUSION

For the reasons stated above and in his opening brief, Mr. Lee respectfully requests this Court remand his case for the opportunity to withdraw his guilty plea.

DATED this 24th day of February 2014.

Respectfully submitted,



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DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF FEBRUARY, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF FEBRUARY, 2014.

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