69892-3

69892-3

NO. 69892-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY CRAIG LEE,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HAYDEN

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

A. ISSUES PRESENTED 1

B. STATEMENT OF THE CASE 2

1. PROCEDURAL FACTS 2

2. SUBSTANTIVE FACTS 3

3. FACTS RELEVANT TO GUILTY PLEA 4

4. MOTION TO WITHDRAW GUILTY PLEA 8

C. ARGUMENT 11

1. LEE HAS NOT ESTABLISHED THAT HIS PLEA WAS INVOLUNTARY 11

2. LEE'S BARE ASSERTION THAT HE WAS UNAWARE THAT HE COULD NOT APPEAL THE COURT'S PRIOR RULINGS IS NOT SUFFICIENT TO OVERCOME THE STRONG PRESUMPTION THAT HIS GUILTY PLEA WAS ENTERED VOLUNTARILY 17

D. CONCLUSION 22

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Boykin v. Alabama, 395 U.S. 238,
89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969) 18

Brady v. United States, 397 U.S. 742,
90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970) 12

Washington State:

State v. Branch, 129 Wn.2d 635,
919 P.2d 1228 (1996) 12, 18

State v. Cameron, 30 Wn. App. 229,
633 P.2d 901 (1981) 13

State v. Frederick, 100 Wn.2d 550,
674 P.2d 136 (1983) 12, 13

State v. Majors, 94 Wn.2d 354,
616 P.2d 1237 (1980) 19

State v. Olson, 73 Wn. App. 348,
869 P.2d 110 (1994) 19

State v. Osborne, 102 Wn.2d 87,
684 P.2d 683 (1984) 13

State v. Perez, 33 Wn. App. 258,
654 P.2d 708 (1982) 12, 19

State v. Smith, 134 Wn.2d 849,
953 P.2d 810 (1998) 19, 21

State v. Wakefield, 130 Wn.2d 464,
925 P.2d 183 (1996) 12, 16

State v. Watson, 159 Wn.2d 162,
149 P.3d 360 (2006) 14

State v. Williams, 117 Wn. App. 390,
71 P.3d 686 (2003) 12

Wood v. Morris, 87 Wn.2d 501,
554 P.2d 1032 (1976) 18

Rules and Regulations

Washington State:

CrR 4.2 .... 11, 12, 18

A. ISSUES PRESENTED

1. When a defendant completes a written statement on plea of guilty, the statement provides prima facie verification of the plea's voluntariness. After the trial court denied Lee's motion to suppress evidence, Lee told the court he was upset that an earlier plea offer was no longer available. When a plea proffer was made, the court advised Lee to discuss the evidence and the options with his attorney and recessed the proceedings to allow Lee more time. Lee then pleaded guilty and affirmed in open court and in a written statement that he was pleading voluntarily. Where Lee was correctly advised by the court that if things went badly at trial, Lee would not be able to later take advantage of the plea deal, has Lee failed to show that his guilty plea was coerced by the trial court?

2. When a defendant voluntarily pleads guilty, he waives his right to appeal most issues. On appeal, Lee claims that he did not understand that he would be unable to appeal the court's prior suppression hearing ruling, thus rendering his plea involuntary. However, there were no erroneous or misleading statements made about the right to appeal during the plea hearing, and the record does not show that Lee expressed any confusion regarding his right to appeal. Where Lee affirmed that he was pleading guilty

voluntarily and the court found that Lee was pleading guilty freely with full knowledge of the consequences, has Lee's bare assertion failed to overcome the strong presumption that his plea was entered voluntarily?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Anthony Craig Lee was charged by Amended Information with one count of violation of the Uniform Controlled Substances Act, possession with intent to deliver cocaine. CP 6. Based on Lee's criminal history, a standard-range term of incarceration of 60 to 120 months would have resulted from a conviction for this offense. 1RP[1] 215. After the trial court denied Lee's motion to suppress the cocaine, Lee pleaded guilty to criminal solicitation to commit a violation of the Uniform Controlled Substances Act, delivery of cocaine. CP 21; 1RP 252. Based on this plea, Lee faced a standard-range sentence of 45 to 60 months of incarceration and was eligible for a prison-based Drug Offender Sentencing Alternative (DOSA). CP 149.

[1] There are two volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (Oct. 5, 15, and 16, 2012); and 2RP (Jan. 17 and Feb. 6, 2013).

After pleading guilty, Lee failed to appear for his sentencing hearing. CP 305; 2RP 4. Upon being remanded to custody, Lee brought a motion to withdraw his guilty plea. 2RP 5, 8. The court denied Lee's motion. 2RP 26. At sentencing, the court granted Lee a prison-based DOSA. CP 151.

2. SUBSTANTIVE FACTS.

This summary is based on the facts described in the Certification for Determination of Probable Cause filed in this case.[2] CP 3-4. On March 21, 2012, at approximately 8:30 p.m., Seattle Police Officer P.J. Fox was patrolling the area of 2nd Avenue and Pine Street in downtown Seattle with his partner, Department of Corrections Officer Lisa Tavarez. CP 3. The officers saw an occupied car parked at a street corner with approximately twelve suspected narcotics users lined up outside the car window. CP 3. As the officers approached the vehicle, the people lined up at the window immediately left the area. CP 3.

Inside the vehicle, Heather Sample was located in the driver's seat and Lee was seated directly behind Sample in the

[2] Lee stipulated that the court could consider the facts set forth in the certification for determination of probable cause and prosecutor's summary for purposes of the sentencing hearing. CP 39.

back seat; they were the only two people in the car. CP 3. While Officer Fox verified the identities of Sample and Lee, both were instructed to keep their hands visible. CP 3. Lee continued to make furtive movements and stuffed a white tissue into the seat area. CP 3. Despite additional requests to keep his hands in sight, Lee continued to make furtive movements and was removed from the vehicle to be patted down for weapons. CP 3.

As Officer Fox patted Lee's right ankle for weapons, he immediately felt a large rock of suspected cocaine in Lee's sock. CP 3. Officer Fox ceased the pat down, arrested Lee for possession of cocaine, and then recovered the cocaine from Lee's sock. CP 3. Lee later told the officers that, due to their interruption, he had not had an opportunity to sell any of the cocaine. CP 3.

3. FACTS RELEVANT TO GUILTY PLEA.

As part of the pretrial hearings, the trial court heard Lee's motion to suppress evidence.[3] 1RP 10. After two days of testimony, the court denied the motion. 1RP 172-73.

After the motion to suppress was denied, Lee brought a motion to discharge his counsel. 1RP 173, 195. Lee explained that

[3] If Lee had prevailed on this motion, it would have had the practical effect of terminating the prosecution against him. CP 9-11.

he had conducted legal research and prepared a Personal Restraint Petition on his own behalf in the past and is "like a paralegal." 1RP 196. Lee expressed frustration with his attorney because the previously available plea offer was no longer available. 1RP 196, 201-02. The court asked the prosecutor if a plea offer was still possible. 1RP 201-02. The court explained to the parties:

> [I]t's [in] my interest to know that whatever offers are currently available have been made crystal clear to the defense... I want to always know that, and I want to make sure the defendant knows what his options are and knows what could go wrong and what the worst-case scenario is as opposed to the best-case, that he's had the opportunity to talk to you about the risks and that he's made an intelligent decision to either take or forego the offer.

1RP 203-04.

Lee's counsel stated that the offer had expired "when [Lee] elected to set this matter for trial." 1RP 205. The court acknowledged that:

> [I]t's still a case that probably ought to be resolved, but I can't make you take the offer nor can I even try to persuade you to take the offer. ... All I can suggest to the State is let's be reasonable, it was a good offer before, it's not a lot to say it's a bad offer today.

1RP 210. Lee concurred, stating, "That's all I'm asking."

The court recessed for twenty-five minutes to allow for negotiations. CP 304; 1RP 214. Upon returning to the courtroom,

the State informed the court that there was a new plea offer: solicitation to deliver, carrying a presumptive sentence range of 45-60 months, compared to the 60-120 month range on the crime charged. 1RP 214-15.

The court explained the options to the defendant and the consequences of each option. 1RP 216-18. When the court asked Lee if he understood, Lee expressed confusion. 1RP 218. Lee clarified that he was not confused about his option to plead guilty or proceed to trial; rather, Lee said he was confused about the court's earlier denial of the motion to suppress evidence. 1RP 218-22. After explaining the reasons for the court's ruling again, the court told Lee: "I've ruled that the officers did what was appropriate for them to do. You now have to look at the facts of the case in concert with your lawyer and decide what are the risks [of] going to trial [and] being found guilty." 1RP 222-23.

After asking Lee if he had any additional questions regarding the State's offer, the court said:

> Let me tell you, Mr. Lee, my concern, it's always something I have to be concerned about is that frequently things go wrong, a conviction comes up, things go badly and then the defendant says, Judge, can I go back in time and do a redo and [sic] I go back and take what I turned down, and the answer is no, you can't.

> And then it will go on appeal and your argument to the Court of Appeals is, well, I didn't take it because I didn't know. Well, it's my job to make sure you know, you understand, and that if you say no to this offer you're doing it understanding the consequences, the potential consequences. One consequence, the jury comes in and they acquit you of everything and you walk away. The other is that they could convict of possession only, which is a lesser charge. Or they could convict you with possession with intent.
>
> ...
>
> What will the jury do with that? I have no idea. And it will not be for me to say, it's up to the jury.

1RP 225-26. After addressing the remaining motions in limine, the court reminded Lee that there were jurors waiting and asked if he had made a decision. 1RP 231. Lee continued to express dissatisfaction with the current plea offer. 1RP 232, 234.

The court recessed for an hour to allow for further plea negotiations. CP 306; 1RP 235. During the recess, Lee indicated that he had decided to plead guilty. CP 306. While Lee reviewed the plea paperwork with his attorney, Lee said that if he was later unhappy with his decision to plead guilty, he would make a motion to withdraw his guilty plea by stating that he had not understood the plea. CP 307. Lee's trial counsel told him that he wanted to make

sure Lee understood the consequences of his guilty plea and continued to review the plea documents with Lee. CP 307.

After the recess, Lee pleaded guilty to solicitation to deliver cocaine. 1RP 236, 252. As part of the plea, Lee completed a statement indicating that he understood the nature of the charges against him and the rights he was giving up by pleading guilty, including the right to appeal a determination of guilt after trial. CP 22-34. In Lee's signed statement, he declared that he was making the plea "freely and voluntarily" without threat or promise. CP 32. Lee's trial counsel also signed the statement acknowledging that he had explained and fully discussed the plea with Lee and that he believed Lee understood its terms. CP 33-34. The court accepted Lee's guilty plea as knowing, intelligent, and voluntary. CP 34.

4. MOTION TO WITHDRAW GUILTY PLEA.

Following his guilty plea on October 16, 2012, Lee failed to appear for his sentencing hearing on October 31. 1RP 254; 2RP 4. Lee was arrested in mid-December on the resulting bench warrant and his sentencing hearing was rescheduled for January 17, 2013. 2RP 4. After Lee's arrest, Lee's counsel contacted the prosecutor

indicating that Lee wanted to negotiate for a sentence of sixty days in jail with credit for time served. 2RP 5.

At the January hearing, Lee brought a motion to withdraw his plea of guilty claiming that: 1) he has mental issues and drug problems; 2) he was incoherent at the time of the plea; 3) he was pressured into pleading guilty by time constraints and his attorney; 4) he told his attorney that he wanted a better deal; 5) his constitutional rights were violated during his arrest on the underlying charge; 6) he was confused about the solicitation language; 7) he needed glasses and is hard of hearing; 8) his attorney failed to investigate whether video cameras were located on the corner where he was arrested; and 9) his attorney failed to object that one of the officers involved in his arrest was a Department of Corrections Officer. 2RP 10-18.

The trial court denied Lee's motion to withdraw his guilty plea. 2RP 23. The court found that Lee pleaded guilty knowingly, and noted that Lee's plea colloquy:

> was one of the longest plea colloquys I think I've had in 20 years. It was the most detailed plea colloquy in trying to explain all of the consequences that I've had in many years and everyone went out of our way, everyone here, the State, the court, and defense counsel went out of our way to explain all of the various aspects of it. At the time of the plea,

> Mr. Lee's biggest concern was tha[t] it was his impression that there had been an offer from the State during early plea negotiations that was better than the one that they were putting forward at the time of trial, and it was clear that it was.

2RP 23-24.

The court found that Lee pleaded guilty voluntarily:

> [T]he only duress at the time of the entry of the plea was he was facing trial. There was no external duress put [on] him by the State or by defense counsel. The duress was that... we had finished pretrial hearings and we were getting ready to pick a jury. It's the same duress that anyone in his situation would feel. The fact that we're finally coming to trial.

2RP 25.

Addressing Lee's claims that his counsel did not properly prepare or investigate for the motion to suppress, the court stated that Lee's attorney did an exemplary job at the hearing. 2RP 26. The court reminded Lee that by pleading guilty, he gave up his right to object to the findings of the suppression hearing. 2RP 26. The court found that the multiple reasons stated by Lee as a basis to withdraw his guilty plea were not credible and that Lee "simply changed his mind after the fact and now wants to come up with... reasons." 2RP 26.

Throughout the plea colloquy and the later hearing, although Lee made multiple claims, including that he had been pressured by

time constraints and his counsel, Lee never raised the claims presented in this appeal: that the trial court influenced his decision to plead guilty or that he had not understood that he would be unable to appeal the court's suppression hearing ruling.

C. ARGUMENT

1. LEE HAS NOT ESTABLISHED THAT HIS PLEA WAS INVOLUNTARY.

Lee claims that the trial court exerted undue pressure on him to plead guilty, thus rendering his plea involuntary. This argument should be rejected. Although the court may have pressured the State to offer a reduction of the charge, it did not pressure Lee into pleading guilty. The specific phrase challenged by Lee, considered in context, was an accurate warning that if things went badly at trial, Lee would not be able to later take advantage of the plea offer. The court properly ensured that Lee was informed of his different options and their respective consequences; the court then recessed to allow Lee to consult with his attorney to make a decision.

A court must allow a guilty plea to be withdrawn if withdrawal is necessary to correct a manifest injustice. CrR 4.2(f). A manifest injustice may arise where a defendant's plea was involuntary.

State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). Whether a plea is voluntary depends on all of the relevant circumstances surrounding it. Brady v. United States, 397 U.S. 742, 749, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). A guilty plea is involuntary if the record shows that it was obtained by mental coercion overbearing the defendant's will. Id. at 750.

When a defendant completes a written statement on plea of guilty in compliance with CrR 4.2 and acknowledges that he has read it and understands it and that its contents are true, the statement provides prima facie verification of the plea's voluntariness. State v. Perez, 33 Wn. App. 258, 261, 654 P.2d 708 (1982); State v. Williams, 117 Wn. App. 390, 401, 71 P.3d 686 (2003). When the trial judge satisfies himself on the record of the existence of various criteria of voluntariness, the presumption of voluntariness is "well nigh irrefutable." Perez, 33 Wn. App. at 262.

A defendant's signature on a plea statement is strong evidence of a plea's voluntariness. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). A defendant's denial of improper influence in open court does not preclude him from later claiming coercion; however, it is "highly persuasive evidence" that a plea is voluntary. State v. Frederick, 100 Wn.2d 550, 557, 674 P.2d 136

(1983). The Washington Supreme Court has emphasized that a defendant who later seeks to retract his admission of voluntariness will bear a heavy burden in trying to convince a court that his admission in open court was coerced. Id. at 558. "The task will be especially difficult where there are other apparent reasons for pleading guilty, such as a generous plea bargain or virtually incontestable evidence of guilt." Id. A guilty plea is valid even though the defendant proclaimed his innocence but pleaded guilty to avoid a potentially harsher punishment. State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981). The defendant's high burden of proof requires more evidence than "a mere allegation by the defendant." State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984).

There is nothing in the record to indicate that Lee's plea was coerced. After Lee's motion to suppress evidence was denied, he expressed disappointment that he could no longer plead guilty to an offer that had expired. 1RP 196, 201-02. Once the State proffered a new plea offer and after a lengthy recess, Lee decided to plead guilty. 1RP 214-15, 235. Lee affirmed that his decision to plead guilty was made voluntarily and free of coercion. CP 32.

Lee's plea of guilty allowed him to plea to a reduced charge where there was virtually incontestable evidence of guilt. By pleading guilty, Lee's standard-range at sentencing was reduced from 60-120 months to 45-60 months of incarceration. 1RP 215. Additionally, pursuant to the plea, Lee could request a prison-based DOSA which would result in 26.25 months of incarceration. CP 151. Moreover, the State's evidence of Lee's possession with intent to deliver cocaine was extremely strong. Officers observed a line of known drug users lined up outside of the lowered car window where Lee was seated. CP 3. Lee had cocaine in his possession and told an officer that he was unable to sell any cocaine because he was interrupted by the police. CP 3. At the time of Lee's decision to plead guilty, the court had already ruled that the physical evidence and Lee's statements were admissible at trial. 1RP 172-73.

Lee cites to State v. Watson to emphasize that trial courts are not to offer advice to defendants about pleading guilty. 159 Wn.2d 162, 149 P.3d 360 (2006). However, the facts in Watson are easily distinguished from the present facts. In Watson, the presiding judge directly advised the defendant that he should

take the State's plea offer.[4] 159 Wn.2d at 165. Here, the court did not advise Lee to plead guilty. Rather, the court ensured that Lee understood the consequences of his decision and recessed the trial proceedings to allow him additional time to consider his options. 1RP 215, 235.

Specifically, Lee claims that the court impermissibly intervened in plea negotiations when the court stated:

> [F]requently things go wrong, a conviction comes up, things go badly and then the defendant says, Judge, can I go back in time and do a redo and [sic] I go back and take what I turned down, and the answer is no, you can't.

1RP 225; Brief of Appellant at 10-11. However, considering this statement in its context, it refers to the judge's experience that after a conviction at trial, defendants often want to take a pretrial plea offer. It was an accurate warning to Lee that if things went badly at trial, he would not be able to later take advantage of the plea offer. Before this statement, the court told Lee that he wanted him to understand his option to plead guilty and to "look at the facts of the case in concert with your lawyer" to make a decision. 1RP 222-23. After the court advised Lee that he would not be able to accept the

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[4] Although the Washington Supreme Court found the presiding judge's statements improper, Watson's guilty plea was voluntary where the judge's remarks were sufficiently removed from the plea, which took place months later. 159 Wn.2d at 165.

plea at a later time if trial went badly, the court told Lee that if he decided to proceed to trial, it was possible that: he could be acquitted, found guilty of the lesser-charge of possession, or found guilty as charged. 1RP 225-26.

Lee analogizes this case to the facts in Wakefield, supra. This comparison is misguided. In Wakefield, the trial court expressed concern that the defendant was not receptive to the plea offer, urged her to take her attorney's advice to plead guilty, and promised that the court would impose a standard range sentence. 130 Wn.2d at 474. Shortly after the judge's promise, the defendant pleaded guilty.[5] Id. In finding that the court's involvement in the plea negotiations "casts significant doubt on the voluntariness of Wakefield's plea[,]" the court noted that a "judge's promise of a standard range sentence could easily sway a defendant to plead guilty." Id.

Here, the trial court did not involve itself in the plea negotiations in any of the ways that the trial court did in Wakefield. Once the court was advised that Lee was interested in a plea offer, the court asked if there was an offer still available. 1RP 201. Once an offer was made, the court told Lee to discuss the evidence

[5] At sentencing, the court actually imposed an exceptional sentence. Id. at 475.

against him, and the plea offer, with his attorney. 1RP 203-04, 222-23. The court never advised Lee to plead guilty nor did the court promise a particular sentence if Lee pleaded guilty.

Lee has not overcome the "highly persuasive evidence" of voluntariness demonstrated from his written and verbal plea statements. Nor has Lee shown any evidence that the trial court exerted undue influence on him in a manner that caused his plea to be involuntary. The trial court stressed that, at the time of Lee's plea, the only pressure on Lee was the result of the impending trial, and found that Lee was coming up with reasons to justify a withdrawal of his guilty plea because he had changed his mind. This Court should reject Lee's current claim.

2. LEE'S BARE ASSERTION THAT HE WAS UNAWARE THAT HE COULD NOT APPEAL THE COURT'S PRIOR RULINGS IS NOT SUFFICIENT TO OVERCOME THE STRONG PRESUMPTION THAT HIS GUILTY PLEA WAS ENTERED VOLUNTARILY.

Lee claims that his guilty plea was involuntary because he was not specifically informed of his inability to appeal the trial court's prior adverse ruling denying Lee's motion to suppress evidence. This claim should be rejected. Lee pleaded guilty after

completing a written statement on plea of guilty in compliance of CrR 4.2 and affirming that he read and understood its terms. The trial court accepted Lee's plea, stating that he was satisfied that it was being entered knowingly, voluntarily, and intelligently, creating a nearly irrefutable presumption that the plea was voluntary. Lee's mere assertion that he did not understand that he would not be able to appeal prior adverse rulings does not overcome this presumption. Moreover, Lee has not demonstrated that he was misadvised nor does the record reflect any confusion regarding this consequence.

The requirements for a guilty plea come from the Constitution and from CrR 4.2. In order for a plea to be constitutionally sufficient, the record must demonstrate that the defendant knowingly waived three important federal rights: the privilege against self-incrimination, the right to trial by a jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). See also Wood v. Morris, 87 Wn.2d 501, 506, 554 P.2d 1032 (1976). CrR 4.2 contains additional procedural safeguards designed to insure that the defendant's rights are protected during a guilty plea. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). CrR 4.2(g)

sets forth the written statement on plea of guilty, which includes acknowledgement by the defendant that by pleading guilty, he is giving up "[t]he right to appeal a finding of guilt after trial."

When a defendant pleads guilty voluntarily, he waives his right to appeal most issues.[6] State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). This is true even if the defendant did not explicitly agree to waive the right to appeal. State v. Majors, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980). A guilty plea does not, however, waive the right to raise collateral questions such as the validity of the statute, sufficiency of the information, jurisdiction of the court, or the circumstances in which the plea was made. Id.

Here, Lee read, said he understood, and then signed his statement on plea of guilty in open court. CP 32-33; 1RP 250. The court accepted Lee's plea as being made knowingly, voluntarily, and intelligently. 1RP 252. These circumstances create a presumption of voluntariness that is "well nigh irrefutable." See Perez, 33 Wn. App. at 261-62.

Lee now claims that the record shows that he did not understand that he could not appeal the suppression hearing

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[6] While a guilty plea waives the right to appeal most issues, a defendant may preserve the right to appeal legal issues through a bench trial on stipulated facts. State v. Olson, 73 Wn. App. 348, 869 P.2d 110 (1994).

rulings. Because this claim is unsupported by the record, it should be rejected. At no point during the proceedings was Lee misinformed that he would be able to appeal the suppression hearings after he pleaded guilty. Nor, did Lee express any confusion about whether he would be able to appeal the suppression hearing rulings. Although Lee expressed confusion with the trial court's ruling on the motion to suppress, Lee never expressed any desire to appeal those rulings. 1RP 218-22.

During the hearing to address Lee's motion to withdraw his guilty plea, Lee raised several multiple bases for why he should be able to withdraw his plea; none of which dealt with his loss of the right to appeal. 2RP 10-18. During that hearing, the trial court noted that Lee would not be able to appeal the evidentiary rulings, and Lee did not inform the court that he had mistakenly believed that he would be able to appeal those rulings. 2RP 26. Here, for whatever reason, Lee became dissatisfied with his decision to plead guilty, and, as he predicted he would, is now claiming that he did not understand the terms of his plea. CP 306-07; 2RP 2-3. Lee has not offered anything to overcome the strong evidence that his plea was offered voluntarily.

In Smith, the defendant acknowledged as part of the plea agreement that he was giving up the right to appeal. 134 Wn.2d at 851, 852-53. But defense counsel told the court that while Smith was waiving some rights on appeal, Smith retained the right to appeal the trial court's suppression ruling, stating: "[H]is plea of guilty itself is not appealable," but Smith "reserved the right to appeal the court's ruling on the pre-trial motion." Id. at 852-53. Neither the court nor the State corrected defense counsel's inaccurate representation. Id. at 853.

The Washington Supreme Court held that because "Smith and everyone else in the courtroom had the same understanding" that under the plea agreement, Smith could appeal the suppression ruling, he did not enter his plea agreement knowingly, voluntarily, and intelligently. Id. The court concluded that "[u]nder these circumstances, it is clear that Smith voluntarily relinquished certain rights, but it is not clear that he knowingly, voluntarily, and intelligently relinquished the right to appeal the suppression hearing." Id.

Here, unlike in Smith, Lee does not point to anything from the record of the plea hearing or the hearing on the motion to withdraw his guilty plea to support his contention. The record

shows that neither the State or defense counsel made any erroneous or misleading statements about Lee's right to appeal during the plea hearing. To the contrary, Lee's attorney affirmed that Lee was making a knowing, intelligent, and voluntary decision and the court found that Lee entered into the plea freely and with full knowledge of the consequences. CP 33-34. Lee's bare assertion has no merit and is unsupported by authority. This Court should reject his argument.

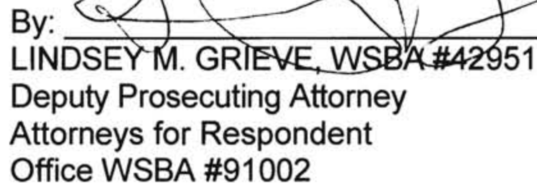
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Lee's conviction.

DATED this 17 day of January, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney



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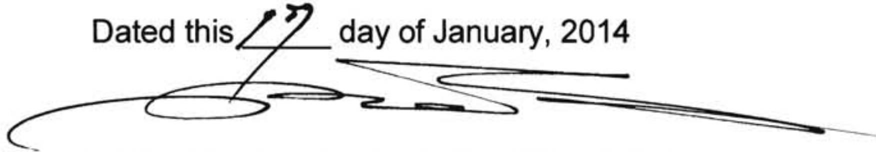
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Kathleen A. Shea, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. ANTHONY LEE, Cause No. 69892-3 - I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 17 day of January, 2014



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