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AUG 29 2014
King County Prosecutor
Appellate Unit

NO. 71837-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

DELANTE HOWERTON,

Appellant.

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

The Honorable Douglass North, Judge

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# BRIEF OF APPELLANT

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## A. ASSIGNMENTS OF ERROR

1. The court erred in admitting evidence resulting from an unlawful detention in violation of appellant's right to be free from unreasonable seizures under the Fourth Amendment and Article I, Section 7 of the Washington Constitution.

2. The court erred in concluding the Terry[1] stop was constitutional. 1RP[2] 56.

3. The court erred in finding the officer had reasonable suspicion of criminal activity based on specific and articulable facts.[3] 2RP 7-13.

4. Without the improperly admitted evidence, there was insufficient evidence to support appellant's convictions for attempted taking a motor vehicle without permission and making or having vehicle theft tools.

Issues Pertaining to Assignments of Error

1. Police may not detain a person without reasonable, articulable suspicion of criminal activity. Here, a 911 call alerted police to a possible car theft in progress. Appellant was in the area and matched the

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

[2] There are three volumes of Verbatim Report of Proceedings referenced as follows: 1RP – Mar. 10, 2014; 2RP – Mar. 11, 2014; 3RP Mar. 12, Mar. 28, 2014.

[3] The lack of written findings of fact has hampered Howerton's ability to assign error. He reserves the right to assign error to any findings entered after this brief is filed.

description given to the 911 dispatcher. Police did not know the caller's identity and did not corroborate any incriminating information before detaining and seizing appellant. Must the resulting evidence be suppressed because the investigative detention violated appellant's rights under the Fourth Amendment and Article I, Section 7 of the Washington Constitution?

2. CrR 3.6(b) requires written findings of fact and conclusions of law after hearings on a motion to suppress evidence. After the CrR 3.6 hearing, no findings or conclusions were filed in this case. Should this case be remanded for entry of the required findings and conclusions?

## B. STATEMENT OF THE CASE

### 1. Procedural Facts

The King County prosecutor charged appellant Delante Howerton with one count of attempted theft of a motor vehicle, one count of making or having vehicle theft tools, and one count of intimidating a public servant. CP 1-2. The court dismissed the intimidation charge for insufficient evidence. 3RP 14. The jury found Howerton guilty of making or having vehicle theft tools and of the lesser-included misdemeanor charge of attempted taking a motor vehicle without permission. CP 51-52.

The court imposed 364 days on each misdemeanor, suspended on condition of serving 150 days. CP 85. Notice of appeal was timely filed. CP 88.

2. Substantive Facts

Howerton was walking southbound on the 13200 block of Second Avenue South West in Burien around 2 a.m. on September 29, 2013. 1RP 8-9. Deputy Hutchinson was responding to a report of a possible attempted car theft, and Howerton matched the description of the suspect as a black male with short hair walking south and wearing jeans and a black leather jacket. 1RP 8-10. Hutchinson ordered Howerton to stop, searched him for weapons, and handcuffed him. 1RP 10-13.

The facts known to Hutchinson when he ordered Howerton to stop were limited. Hutchinson testified he was dispatched to a "vehicle prowl, larceny, something to that effect." 1RP 7. He explained, "My recollection was that it was a possible car theft in progress, somebody was attempting to steal a vehicle." 1RP 7. He testified he had a description of the subject as a "black male wearing jeans and a leather jacket." 1RP 8. He knew the person was on foot heading south on Second Avenue Southwest. 1RP 9. He noticed that, when Howerton saw the patrol car, he turned around and began walking north. 1RP 10. Hutchinson was close enough to determine the

person matched the description of a "black male wearing a leather jacket and pants and short hair." 1RP 10.

Although the Computer Aided Dispatch report lists the caller's name and phone number, Hutchinson could not say if he had looked at it or knew the name or number at the time. 1RP 21. He had no prior contact with the caller and knew nothing about her outside of what was provided in the 911 call. 1RP 21-22. The 911 call did not give any details about how she came to the conclusion that a crime was being committed, such as how the suspect entered the van, who the van's owner was, or any damage to the van. 1RP 22-23. Hutchinson was dispatched at 2:03 a.m. and arrived at 2:06. 1RP 12-13. He was only 50 yards from the vehicle in question when he detained Howerton, but Hutchinson did not know that at the time. 1RP 13.

No officer spoke to the 911 caller and no additional information was obtained before Howerton was detained. 1RP 23-25, 31. Hutchinson simply assumed the call was legitimate and the dispatch report was true. 1RP 28.

After Hutchinson detained Howerton, he searched for weapons and found a foot-long bread knife, a screwdriver, a red pocketknife, pruning shears, and a box cutter with no blade in it. 2RP 58. The blade of the bread knife was sticking out of the end of Howerton's sleeve. 2RP 58. Detective Skaar testified car theft requires a tool to break away the plastic cover on the

ignition lock such as a box cutter or heavy gauge scissors, and something to pry away the plastic. 2RP 108-09.

Deputy Kinsey arrived while Howerton was standing with his hands on Hutchinson's patrol car. 2RP 94. He contacted the 911 caller, who said she could see Howerton and he was the person she had called about. 2RP 25, 97. Howerton was placed under arrest. 2RP 63-64.

Kinsey inspected the car that the caller pointed out and saw the front passenger window was broken, there was shattered glass outside the van, part of the center console plate had been removed and the stereo space was empty. 2RP 99. The cover of the right side of the steering column was partly broken off and part of the ignition switch was broken out. 2RP 99. Kinsey testified this type of damage was consistent with an attempt to steal the car. 2RP 100.

At trial, the 911 caller, Laura Parks, testified she was asleep on her living room couch when she awoke to the sound of a car engine repeatedly trying to turn over. 2RP 18-20. She looked outside and saw what looked like a struggle inside her neighbor's van across the street. 2RP 20-21. She saw someone she did not recognize get out of the van, and she called 911 as she watched the person walk away. 2RP 22-23. He was out of her sight for a brief time before he walked back into her view and was stopped by Deputy Hutchinson. 2RP 23-24.

Gretchen Lemon testified she was awakened by a phone call from a neighbor and went outside to find several police officers had arrived and her van was both running and damaged. 2RP 42-43. She testified she had not left the van running and the damage was new. 2RP 45. She testified she did not know Howerton and had not given him permission to enter or drive her van. 2RP 50.

## C. ARGUMENT

### 1. THE OFFICERS SEIZED HOWERTON WITHOUT REASONABLE SUSPICION IN VIOLATION OF HIS RIGHTS UNDER THE FOURTH AMENDMENT AND ARTICLE I, SECTION 7.

Under the Fourth Amendment and article 1, section 7 of the Washington Constitution,[4] warrantless seizures are "per se unreasonable." State v. Kinzy, 141 Wn.2d 373, 384, 5 P.3d 668 (2000); State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (citing Coolidge v. New Hampshire, 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)). Nevertheless, brief investigative detention without a warrant may be reasonable so long as the detention is both justified at its inception and reasonably limited in scope. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426

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[4] The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." Article 1, § 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

(2008) (citing State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999)); State v. Duncan, 146 Wn.2d 166, 172, 43 P.3d 513 (2002).

The burden is on the State to prove the detention was justified by "specific and objective facts that provide a reasonable suspicion that the person stopped has committed or is about to commit a crime." Duncan, 146 Wn.2d at 171; State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997). When the State fails to establish the reliability of an informant's tip, that tip cannot justify a warrantless seizure. State v. Hopkins, 128 Wn. App. 855, 864, 117 P.3d 377 (2005). To show that an informant's tip was reliable enough to warrant detention, the State must show that 1) the informant is reliable and 2) the informant's tip either contains enough facts to justify pursuit or that the police have independently corroborated non-innocuous details of the tip. Id. at 862-63.

Conclusions of law regarding the constitutionality of a warrantless seizure are reviewed de novo on appeal. Gatewood, 163 Wn.2d at 539. The trial court's findings of fact are reviewed for substantial evidence. Duncan, 146 Wn.2d at 171. When a person is unlawfully seized in violation of either the Fourth Amendment or Article I, Section 7 or both, the evidence obtained as a result of that seizure must be excluded. State v. Gantt, 163 Wn. App. 133, 144, 57 P.3d 682 (2011) rev. denied, 173 Wn.2d 1011 (2012) (citing State v. Harrington, 167 Wn.2d 656, 664, 222 P.3d 92 (2009)). When the

untainted evidence fails to support a conviction, the conviction must be reversed. Hopkins, 128 Wn. App. at 866 (reversing because conviction rested solely on evidence obtained via improper warrantless seizure).

In this case, there is no question Howerton was seized without a warrant. The State did not dispute the timing of the seizure below. 1RP 48-49. A detention occurs the moment a reasonable person would not feel free to leave. Armenta, 134 Wn.2d at 10. Howerton was seized from the moment Hutchinson ordered him to stop and approach the patrol car because no reasonable person would feel free to walk away under those circumstances. 1RP 10-11; Gatewood, 163 Wn.2d at 540 (2008) (State conceded seizure when officer said "Stop, I need to talk to you,") (citing State v. O'Neill, 148 Wn.2d 564, 577, 62 P.3d 489 (2003) (holding that commanding a person to stop is a seizure)).

That warrantless seizure was unconstitutional because the scant facts known to Hutchinson at the time did not provide reasonable suspicion of criminal activity. The 911 call was not a reliable tip and Deputy Hutchinson was not aware of any other objective facts supporting articulable suspicion of criminal activity. The remedy for this constitutional violation is suppression of the evidence under the exclusionary rule, and, without the illegally obtained evidence, Howerton's convictions must be reversed for insufficient evidence. Gatewood, 163 Wn.2d at 542; Hopkins, 128 Wn. App. at 866.

a. The 911 Call Does Not Provide Reasonable, Articulable Suspicion of Criminal Activity Because the Officers Had No Information Indicating the 911 Caller Was Reliable.

At the suppression hearing under CrR 3.6, Deputy Hutchinson admitted he knew nothing about the caller and simply assumed the information he received from dispatch about the 911 call was true. 1RP 28. This assumption is insufficient to find the caller reliable.

"Even a named, but otherwise unknown, citizen informant is not presumed to be reliable and a report from such an informant may not justify an investigative stop." State v. Z.U.E., 178 Wn. App. 769, 783, 315 P.3d 1158, 1165 (2014). In the past, this Court has stated that named citizen informants are presumed reliable. State v. Wakeley, 29 Wn. App. 238, 241, 628 P.2d 835 (1981). But more recent decisions have clarified this principle. When officers do not know the caller's name and do not independently corroborate any incriminating or information before detaining the targeted person, the detention is unlawful. Hopkins, 128 Wn. App. at 863-66.

This case directly parallels Hopkins, in which a citizen informant called 911 to report a minor who appeared to be carrying a gun. 128 Wn. App. at 858. The dispatch center had the caller's name and two different phone numbers. Id. But the officers testified that, at the time, they did not know the caller's name or anything whatsoever about his or her identity or

reliability. Id. They did not know whether the informant knew Hopkins. Id. A few minutes later, the caller called back to say Hopkins was now at a different location. Id. When the officers arrived, they saw Hopkins, who partially met the caller's description, in a phone booth, hanging up a phone. Id. at 859. The officers observed no illegal or suspicious activity. Id. Nevertheless, the officers approached and detained Hopkins and asked him if he had a gun, based on the citizen informant's tip. Id.

The court agreed with the trial court that the police in Hopkins "just assumed everything … the tipster told them was true." Id. at 863. Although the officers had access to the caller's name, that name "was meaningless" to them and could easily have been fabricated. Id. Under these facts, the court held the State had failed to establish the informant's reliability. Id. at 864; see also Z.U.E., 178 Wn. App. at 784 (relying on Hopkins and holding that "obtaining the unknown informants' names and contact information is not enough to establish their reliability.").

As in Hopkins, Deputy Hutchinson just assumed that what the 911 caller said was true. 1RP 28. He had no more information about the 911 caller than did the officers in Hopkins. He did not know the 911 caller's name or phone number. 1RP 21. Even if he had, it would not have meant anything to him because he knew nothing about her except that she had called 911. 1RP 22. Therefore, the fact that the 911 caller's name and

phone number was available to Deputy Hutchinson is insufficient to establish a reliable basis for a Terry stop. Z.U.E., 178 Wn. App. at 784; Hopkins, 128 Wn. App. at 863.

b. Nothing In the Content of the 911 Call Provided the Requisite Indicia of Reliability.

According to Hutchinson, he was dispatched to a possible car theft or a vehicle prowl in progress. 1RP 6-7, 22. He knew nothing about the relationship of the caller to the incident, such as whether she was an eyewitness or the basis of her knowledge. 1RP 22-25. He knew nothing about the facts on which the caller based her allegation. 1RP 22-25. This was insufficient to lend reliability to an essentially anonymous tip.

When an anonymous caller implicitly but necessarily claims eyewitness knowledge of the alleged crime, that fact weighs in favor of finding the tip reliable. Navarette v. California, ____ U.S. ____, 134 S. Ct. 1683, 1689, 188 L. Ed. 2d 680 (2014). For example, in Navarette, a driver called 911 to report she had just been run off the road and gave the license plate number and description of the offending vehicle. ___ U.S. at ___, 134 S. Ct. at 1686-87. The court concluded that the information about having been run off the road necessarily implied first-hand eyewitness knowledge of the incident. ___ U.S. at ___, 134 S. Ct. at 1689. The Court also concluded the traceability of 911 calls and the immediacy of the report weighed in favor

of finding the caller reliable. ___ U.S. at ___, 134 S. Ct. at 1689-90. While acknowledging that "this is a close case," the Court held the 911 call established reasonable suspicion of drunk driving and justified stopping the vehicle. ____ U.S. at ____, 134 S. Ct. at 1692.

This case falls on the other side of the line identified in Navarette because one link in the chain that led the Court to find a 911 call reliable in that case is absent here: The evidence in this case does not establish how the 911 caller came to suspect an attempted car theft was in progress. Deputy Hutchinson had no information indicating this was a first-hand or eyewitness account. Officers may not simply presume that informants' tips are eyewitness accounts. Z.U.E., 178 Wn. App. at 785. The limited facts available to Hutchinson gave him no basis to believe in the reliability of the caller's conclusory allegation.

Additionally, the content of the 911 call gave no more than a conclusory allegation of criminal conduct without any supporting facts. The court concluded the description of being run off the road was "more than a conclusory allegation of drunk or reckless driving." Navarette, ___ U.S. at ___, 134 S. Ct. at 1691. By contrast, the 911 caller here reported only a conclusory allegation of attempted car theft. This might be a different case if the caller had said, for example, "It's 2 a.m. and there's someone, not my

neighbor, rummaging around in my neighbor's van." Instead, according to Deputy Hutchinson, all he had was a report of a possible car theft. 1RP 7.

"Even if an informant is reliable. . . an informant's 'bare conclusion' that criminal conduct had occurred 'unsupported by any factual foundation' was insufficient to justify an investigative stop." Z.U.E., 178 Wn. App. at 785 (quoting State v. Sieler, 95 Wn.2d 43, 48, 621 P.2d 1272 (1980)). Because the 911 call gave officers no basis for the caller's knowledge and no reason for suspicion beyond a conclusory allegation of criminal conduct, the content of the tip also failed to establish its reliability. Id.

c. Hutchinson Failed to Corroborate Any Sign of Suspicious Activity Before Seizing Howerton.

When the tip itself fails to provide a factual basis for the assertion of criminal activity, officers must independently corroborate the tip by observing suspicious behavior. Z.U.E., 178 Wn. App. at 785-86. But here, Deputy Hutchinson observed no suspicious circumstances whatsoever before detaining Howerton. 1RP 8-11, 24-25. The State failed to show it corroborated any non-innocuous details via independent investigation.

The only fact Hutchinson confirmed was that Howerton was in the expected location and matched the physical description. 1RP 8-10. But "[c]onfirming a subject's description or location or other innocuous facts does not satisfy the corroboration requirement." Z.U.E., 178 Wn. App. at

787. The fact that Howerton matched the caller's description is of no moment because his physical description provides no reason to suspect criminal activity. Hopkins, 128 Wn. App. at 864. Anyone who knew or even saw Howerton could provide his description and a conclusory allegation in an attempt to harass him. Id. at 864-65 (quoting Florida v. J.L., 529 U.S. 266, 272, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000)). The innocuous facts of Howerton's description and location do not render the 911 caller's conclusory allegation of criminal activity reliable.

The only additional fact Hutchinson gathered was that, upon seeing him, Howerton turned and walked in the other direction. 1RP 10. But even a "startled reaction" upon seeing police does not provide reasonable suspicion to warrant investigative detention. Gatewood, 163 Wn.2d at 540. And Hutchinson did not even go so far as to claim that Howerton appeared startled. He merely said Howerton was walking south and, upon seeing Hutchinson, he turned abruptly and walked in the opposite direction. 1RP 10. Like the officers in Hopkins, Hutchinson was able to confirm only innocent details before detaining Howerton.

The facts available to Deputy Hutchinson when he detained Howerton do not establish the reliability either of the 911 caller herself nor of the information she provided. Nor did Deputy Hutchinson corroborate any non-innocuous facts through independent investigation. Therefore, there

was no reasonable suspicion for the Terry stop. Hopkins, 128 Wn. App. at 862-66.

d. An Attempted Car Theft Does Not Present a Danger that Might Warrant a Brief Detention on Less than Reasonable Suspicion.

The trial court here justified the detention on the grounds that it was of extremely short duration. 1RP 53-54. But that fact is immaterial to the analysis under Terry. A Terry stop must be justified at its inception. Gatewood, 163 Wn.2d 534, 539. Because the detention must be justified at its inception, the only facts relevant are those known to the officers at that moment. Id. at 540. "No subsequent events or circumstances can retroactively justify a stop." Z.U.E., 178 Wn. App. at 780. The ultimate duration of the detention is information not available until after the detention has occurred. To justify even the limited intrusion on liberty that an investigative detention represents, there must be reason to suspect specific criminal activity *before* any detention. Gatewood, 163 Wn.2d at 540.

Courts may consider an immediate and significant danger in determining whether a brief detention is permissible, even based on reports with low reliability. State v. Saggers, ____ Wn. App. ____, ____ P.3d ____, 2014 WL 3929108 (no. 69852-4-I, filed Aug. 11, 2014); see also Navarette, ___ U.S. at ___, 134 S. Ct. at 1691-92 (noting that "allowing a drunk driver a second chance for dangerous conduct could have disastrous

consequences"). But in Saggers, this Court ultimately suppressed the evidence and reversed the conviction because no such danger existed. ___ Wn. App. at ___, 2014 WL at *1. In that case, the 911 caller alleged a man was hitting a woman and threatening her with a firearm in a dispute over a drug deal. Id. However, by the time the police detained Saggers, they had already determined that no woman was present and there appeared to be no immediate threat to anyone. Id. at *2. Because there was no indication the caller's tip was reliable and there were no exigent or dangerous circumstances, the court held the investigative detention was not a valid Terry stop. Id. at 6.

This case is akin to Saggers. This was a property crime. There was no indication of an immediate threat or danger to any person, and certainly not the extreme danger presented by a drunk and reckless driver on a highway or a person threatening another with a firearm. No danger existed that could justify police detention, no matter how brief, on less than reasonable suspicion.

Deputy Hutchinson detained Howerton based on an unknown caller's conclusory allegation of an attempted property crime without any indication that report was reliable. The detention under these circumstances was unconstitutional under Hopkins, Saggers, and Z.U.E.

As a result of this unlawful detention, the deputies obtained all the evidence linking Howerton to any criminal conduct: his identification by Laura Parks and the items found on his person when he was detained. The untainted evidence consists merely of the fact of damage to the car and Parks' description of a black male suspect wearing jeans and a leather jacket. Even viewed in the light most favorable to the State, this evidence falls far short of proving any wrongdoing by Howerton.

To paraphrase Justice Scalia's dissent in Navarette, car theft is a serious matter, "but so is the loss of our freedom to come and go as we please without police interference." ___ U.S. at ___, 134 S. Ct. at 1697 (Scalia, J, dissenting). The violation of Howerton's constitutional liberty rights to be free from unreasonable seizure requires reversal of his convictions.

2. THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER CRR 3.6

The evidence against Howerton was admitted after a hearing on his CrR 3.6 motion to suppress the evidence as the fruit of an unlawful seizure. 1RP 6-56. Howerton's motion for reconsideration of the seizure was also denied. 2RP 5-13. The court, however, failed to enter written findings or conclusions as required by CrR 3.6.

Criminal Rule 3.6 provides in subsection (b), "If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law." Under the plain language of this rule, written findings of fact and conclusions of law are required. The court below rendered an oral decision, but no written findings or conclusions have been entered as of this date. 1RP 53-56; 2RP 7-13.

The purpose of written findings is to allow the reviewing court to determine the basis upon which the case was decided and to review the issues raised on appeal. State v. Pena, 65 Wn. App. 711, 715, 829 P.2d 256 (1992), overruled on other grounds, State v. Alvarez, 128 Wn.2d 1, 18-19, 904 P.2d 754 (1995)). Meaningful appellate review requires findings of fact "that show an understanding of the conflicting contentions and evidence, and a resolution of the material issues of fact . . . with knowledge of the standards applicable to the determination of those facts." State v. Jones, 34 Wn. App. 848, 851, 664 P.2d 12 (1983). Those findings are absent in this case.

Although the trial court entered oral rulings, the appellate court should not have to comb these rulings to determine if there are appropriate findings, nor should a defendant be required to interpret oral rulings. State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998). A court's oral rulings are not an adequate substitute for the written findings and conclusions mandated by CrR 3.6. The oral decision is "no more than a

verbal expression of [the court's] informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned." Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963). Consequently, the court's decision is not binding "unless it is formally incorporated into findings of fact, conclusions of law, and judgment." State v. Hescock, 98 Wn. App. 600, 606, 989 P.2d 1251 (1999) (quoting State v. Dailey, 93 Wn.2d 454, 459, 610 P.2d 357 (1980)).

"When a case comes before this court without the required findings, there will be a strong presumption that dismissal is the appropriate remedy." State v. Smith, 68 Wn. App. 201, 211, 842 P. 2d 494 (1992). Smith involved a CrR 3.6 hearing, so its reasoning applies to this case. But when no actual prejudice would arise from the failure of the court to file written findings and conclusions, the remedy is remand for entry of the written order. Head, 136 Wn.2d at 624.

Assuming the State ultimately presents findings and conclusions and the court signs them, reversal will still be required if the delayed entry prejudices Howerton. State v. Portomene, 79 Wn. App. 863, 864, 905 P.2d 1234 (1995); see also State v. B.J.S., 72 Wn. App. 368, 371, 864 P.2d 432 (1994). For example, prejudice will result from untimely written findings and conclusions if there is indication the findings have been "tailored" to meet issues raised on appeal. Head, 136 Wn.2d at 624-25; Portomene, 79

Wn. App. at 865. "[I]f the State fails to file written findings and conclusions until after the appellant has submitted his or her opening brief, and the record reflects that the findings and conclusions were tailored to address the assignments of error raised in appellant's brief, prejudice may be found." State v. Litts, 64 Wn. App. 831, 837, 827 P.2d 304 (1992).

This Court should remand Howerton's case for entry of findings and conclusions. Depending on their content, Howerton reserves the right to address the issue of prejudice or tailoring in his reply or, if necessary, in a supplemental brief.

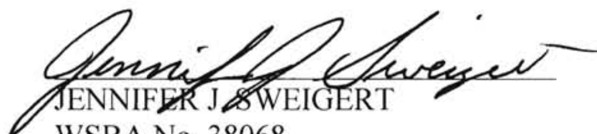
D. CONCLUSION

The evidence against Howerton should have been suppressed as the fruit of an unlawful seizure in violation of his constitutional rights under the Fourth Amendment and Article I, Section 7. Howerton therefore requests his convictions be reversed and dismissed with prejudice.

DATED this 29th day of August, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER J. SWEIGERT
WSBA No. 38068
Office ID No. 91051

Attorney for Appellant

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

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|---|---|---|
| STATE OF WASHINGTON | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | |
| v. | ) | COA NO. 71837-1-I |
| | ) | |
| DELANTE HOWERTON, | ) | |
| | ) | |
| 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 29TH DAY OF AUGUST 2014, 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 AND/OR VIA EMAIL.

[X] DELANTE HOWERTON
14202 5TH AVENUE S.
BURIEN, WA 98168

**SIGNED** IN SEATTLE WASHINGTON, THIS 29TH DAY OF AUGUST 2014.

x Patrick Mayovsky