

No. 47765-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Richard Christensen,

Appellant.

Pierce County Superior Court Cause No. 15-1-00444-3

The Honorable Judge K.A. van Doorninck

Appellant's Opening Brief

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ISSUES AND ASSIGNMENTS OF ERROR

1. The *Terry* stop of Mr. Christensen violated his rights under the Fourth Amendment.
2. The *Terry* stop of Mr. Christensen violated his rights under Wash. Const. art. I, § 7.
3. The officers did not have reasonable suspicion to believe that Mr. Christensen had committed a crime.
4. The trial court erred by adopting finding of fact 18. (Findings and Conclusions on 3.6 filed 7/20/15, p. 4, Supp. CP)
5. The trial court erred by adopting finding of fact 22. (Findings and Conclusions on 3.6 filed 7/20/15, p. 4, Supp. CP)
6. The trial court erred by adopting finding of fact 24. The trial court erred by adopting finding of fact 23. (Findings and Conclusions on 3.6 filed 7/20/15, p. 4-5, Supp. CP)
7. The trial court erred by adopting conclusion of law 1. (Findings and Conclusions on 3.6 filed 7/20/15, p. 6, Supp. CP)
8. The trial court erred by adopting conclusion of law 3. (Findings and Conclusions on 3.6 filed 7/20/15, p. 6-7, Supp. CP)

ISSUE 1: The police may conduct a brief investigatory seizure of a person if they have specific and articulable facts creating a reasonable suspicion that s/he has committed a crime. Did the officers violate Mr. Christensen’s constitutional rights by seizing him (a black man over six feet tall with no hair and tattoos reading “ZyZy” and “Libra”) based on information that a robbery had been committed by a black man who was about 5’9” tall with cornrows and a tattoo that included the word “bitch”?

9. The officers violated Mr. Christensen’s Fourth Amendment rights by patting him down for weapons.
10. The officers violated Mr. Christensen’s art. I, § 7 rights by patting him down for weapons.
11. The officers did not have reason to believe that Mr. Christensen was presently armed and dangerous to justify a protective frisk.

12. Even if the initial stop of Mr. Christensen was constitutional, the officers went beyond its permissible scope.
13. The officer's actions beyond the permissible scope of a *Terry* stop present manifest error affecting a constitutional right.
14. The trial court erred by adopting finding of fact 23. (Findings and Conclusions on 3.6 filed 7/20/15, p. 4, Supp. CP)
15. The trial court erred by adopting finding of fact 27. (Findings and Conclusions on 3.6 filed 7/20/15, p. 5, Supp. CP)
16. The trial court erred by adopting finding of fact 29. (Findings and Conclusions on 3.6 filed 7/20/15, p. 5-6, Supp. CP)
17. The trial court erred by adopting conclusion of law 2. (Findings and Conclusions on 3.6 filed 7/20/15, p. 6, Supp. CP)

ISSUE 2: The police may conduct a protective frisk for weapons of a person whom they have reason to believe is presently armed and dangerous. Did the officers exceed the scope of a permissible *Terry* stop of Mr. Christensen by patting him down for weapons even after they could have easily determined that he was not the robbery suspect they were looking for?

18. The unlawful arrest of Mr. Christensen violated his rights under the Fourth Amendment.
19. The unlawful arrest of Mr. Christensen violated his rights under art. I, § 7.
20. The police conducted a custodial arrest of Mr. Christensen by handcuffing him and locking him in a patrol car.
21. The police arrested Mr. Christensen absent probable cause to believe that he had committed a crime.
22. The trial court erred by adopting finding of fact 20. (Findings and Conclusions on 3.6 filed 7/20/15, p. 6, Supp. CP)

ISSUE 3: Officers conduct a custodial arrest when they actually seize a person and manifest intent to take him/her into custody. Did the officers arrest Mr. Christensen without probable cause when they handcuffed him and locked him in a patrol car without probable cause to believe that he had committed a crime?

23. Mr. Christensen's attorney provided ineffective assistance of counsel by failing to move to suppress based on the officers' actions beyond the permissible scope of a *Terry* stop.
24. Mr. Christensen was prejudiced by his attorney's deficient performance.

ISSUE 4: Defense counsel provides ineffective assistance by failing to move to suppress resulting evidence when the police violate his/her client's constitutional rights. Did Mr. Christensen's attorney provide ineffective assistance by failing to argue that the gun should be suppressed based on the officers' actions beyond the permissible scope of a *Terry* stop?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Richard Christensen ran into an acquaintance and asked her to give him a ride to the Emerald Queen Casino in Fife. Ex. 4 at 09:20-09:56. She agreed and dropped him off in the parking lot of the Days Inn across the street from the casino around 3:00 pm. CP 24; Ex. 4 at 09:20-09:56. That area of Fife has a lot of traffic. *See* Ex. 4.

Mr. Christensen got out of the car and tried to walk across Pacific Highway to the casino. CP 24. Before he crossed the street, though, he was stopped by a police officer and ordered to put his hands on the police car. CP 24.

The officer was investigating a robbery that had happened in the early morning hours. CP 23. Other officers were conducting a sting operation in the Days Inn to try to apprehend a woman who had been involved in the robbery. CP 23.

The officer who stopped Mr. Christensen had been told that the other robbery suspect was a black male, approximately 5'9", with cornrows in his hair, and a neck tattoo of text including the word "bitch." RP 35-36.

Mr. Christensen is also a black male. RP 55. But he is over six feet tall and had no hair. RP 60, 97; Ex 4 at 04:09. Mr. Christensen has tattoos on his neck saying "ZyZy" and "Libra." CP 24.

Mr. Christensen stood with his hands on the police cruiser until another officer arrived. RP 79, 83; Ex. 4 at 00:37. Then the two officers handcuffed him and patted him down together. RP 47, 86; CP 24. They found a small gun. RP 48.

The officers asked Mr. Christensen if he had a concealed weapons permit and he said that he did not. CP 24. They got his identifying information and locked him in a police car. Ex. 4 at 03:47-04:35.

Several minutes later, Mr. Christensen explained how he had gotten to the Days Inn. Ex. 4 at 09:20-09:56. He also eventually admitted that he had a prior felony conviction. Ex. 4 at 12:05.

The police formally arrested Mr. Christensen. CP 25.

The police eventually arrested the man responsible for the robbery as well. RP 23. His booking photo shows shoulder-length hair, a full beard, and a neck tattoo with large, clearly legible text saying “bitches ain’t shit.” Ex 1.

The state charged Mr. Christensen with unlawful possession of a firearm. CP 1. He moved to suppress the gun as the product of an unconstitutional seizure. CP 3-8.

At the suppression hearing, the officers said that they could not tell if Mr. Christensen had cornrows in his hair because he was wearing a ball cap. RP 60. They said that they did not try to look at his hair. RP 97.

They also said that he did not try to read Mr. Christensen's neck tattoos until later. RP 62, 97.

The court viewed a police dashcam video of the encounter. RP 42; Ex 4.

On the video, the officers never ask Mr. Christensen to remove his hat. Ex. 4. They also never ask him anything about his tattoos or request that he move his collar so they can see what is on his neck. Ex. 4.

They also do not ask him anything about the robbery even though he waives his *Miranda* rights, agrees to talk to them, and answers all of their questions about the gun. Ex. 4 at 03:19-04:00.

The officers take Mr. Christensen's hat off (revealing his bald head) after finding the gun. Ex 4 at 04:09.

The officer testified that he always frisks people before conducting any additional investigation. RP 63.

The trial court denied Mr. Christensen's motion to suppress the gun. RP 109. The court found him guilty at a stipulated facts trial. RP 116-122.

Mr. Christensen timely appealed. CP 88.

ARGUMENT

I. THE POLICE VIOLATED MR. CHRISTENSEN’S RIGHTS UNDER THE FOURTH AMENDMENT AND ART. I, § 7 WHEN THEY STOPPED HIM SIMPLY BECAUSE HE WAS IN THE AREA THEY WERE INVESTIGATING AND THE SAME RACE AS A ROBBERY SUSPECT.

The police stopped Mr. Christensen – a black male over six feet tall with no hair and tattoos reading “ZyZy” and “Libra.” RP 60, 97; CP 24. But they were looking for a black man who was approximately 5’9” with cornrows and a tattoo that said “bitches ain’t shit”. RP 36.

The description of the robbery suspect did not provide reasonable suspicion to stop Mr. Christensen. *State v. Z.U.E.*, 183 Wn.2d 610, 352 P.3d 796 (2015). The court should have granted his suppression motion. *Id.*

Warrantless searches are *per se* improper under the state and federal constitutions. *State v. Saggors*, 182 Wn. App. 832, 839, 332 P.3d 1034 (2014); U.S. Const Amends. IV, XIV; art. I, § 7. The state bears the burden of establishing that the seizure falls within one of the “carefully drawn exceptions to the warrant requirement.” *Z.U.E.*, 183 Wn.2d at 617.

A brief *Terry* stop is permissible for investigative purposes if the state can show that the officers had a reasonable suspicion that the detained person was involved in a crime. *Id.* The suspicion must be grounded in “specific and articulable facts.” *Id.*

Because art. I, § 7 provides greater privacy protection than the Fourth Amendment, the state constitution requires a stronger showing than the federal constitution. *Id.* at 618.

A valid *Terry* stop requires “a substantial possibility that the particular person has committed a specific crime or is about to do so.” *State v. Cardenas-Muratalla*, 179 Wn. App. 307, 309, 319 P.3d 811 (2014).

The state must prove reasonable suspicion by clear, cogent, and convincing evidence. *State v. Doughty*, 170 Wn.2d 57, 62, 239 P.3d 573 (2010).

Here, the description of the robbery suspect did not provide “specific and articulable facts” upon which to stop Mr. Christensen. *Z.U.E.*, 183 Wn.2d at 617.

The table below clarifies the extent to which Mr. Christensen aligned with the description the officers had of the robbery suspect:

Description of robbery suspect	Mr. Christensen
Black male. RP 36.	Black male. RP 55.
About 5’9” tall. RP 36	Over 6’ tall. RP 60.
Hair in cornrows. RP 36.	Completely bald. RP 97.
Neck tattoo including the word “bitches.” RP 36.	Neck tattoos that say “ZyZy” and “Virgo.” CP 24.

Nothing about clothing in description. RP 36.	n/a
No approximate age in description. RP 36.	n/a
No approximate weight or information about build in description. RP 36.	n/a
No information about facial hair in description. RP 36.	n/a

The only things that Mr. Christensen had in common with the alleged robber were that he was black and had a tattoo on roughly the same part of his body. Those two similarities do not rise to the level of specificity required for reasonable suspicion. *See United States v. Brown*, 448 F.3d 239, 246 (3d Cir. 2006).

A person's presence in an area where the police expect to find a crime suspect is insufficient to justify a *Terry* stop when the person does not also sufficiently match the description of the suspect or when the description is too vague. *See e.g. Brown*, 448 F.3d 239.

The fact that Mr. Christensen was walking near Days Inn is insufficient to provide reasonable suspicion. *Id.* Indeed, the officers' conjecture that the man would come to the hotel with the female robbery

suspect did not give them license to frisk every tattooed black man in a busy area of Pacific Highway. *Id.*¹

An attempt by the officers to collect enough information to justify a stop – such as asking Mr. Christensen to remove his hat so they could see his hair or to move his collar so they could read his tattoo – would have dispelled any suspicion that he was the robbery suspect within a few seconds. The state and federal constitutions did not permit the officers to seize and frisk Mr. Christensen absent the “specific and particularized facts” those steps would have produced. *Z.U.E.*, 183 Wn.2d at 617.

An appellate court reviews *de novo* whether the state has met its burden to justify a *Terry* stop. *Saggers*, 182 Wn. App. at 839.

The state has not met that burden here.² *Id.* The officers did not have sufficient “specific and articulable facts” to justify stopping and

¹ In fact, in *Brown*, the man the officers frisked was within several blocks of where the robbery had actually occurred very recently. *Brown*, 448 F.3d at 242. Even then, his mere presence in the area was insufficient to provide reasonable suspicion when he did not also substantially match a detailed description of the robber. *See generally Id.*

² The robbery suspect was also associated with a dark-colored Dodge Charger. RP 70. Mr. Christensen admitted *after he was stopped and searched* that he had been dropped off by a light-colored Charger. Ex. 4 at 10:03. But a *Terry* stop must be justified at its inception. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). Because the police did not know that Mr. Christensen had been in a Charger when they seized him, that information is not relevant to the analysis on appeal. *Id.*

One officer also testified that Mr. Christensen appeared startled to see him. RP 82. But “startled reactions to seeing the police” are, likewise, insufficient to amount to reasonable suspicion. *Gatewood*, 163 Wn.2d at 540.

frisking Mr. Christensen when his only similarities to the robbery suspect were his race and the location of a tattoo. *Z.U.E.*, 183 Wn.2d at 617.

The trial court erred by denying Mr. Christensen’s motion to suppress the gun. *Id.* Mr. Christensen’s conviction must be reversed. *Id.*

II. EVEN IF THE ORIGINAL STOP WAS LAWFUL, THE OFFICERS EXCEEDED THE SCOPE OF AN ALLOWABLE *TERRY* DETENTION BY PATTING MR. CHRISTENSEN DOWN AND THEN LOCKING HIM IN A PATROL CAR.

The events after the officers stop Mr. Christensen are outlined in the following table:

Event	Legal significance
The officers stop Mr. Christensen and ask him to place his hands on the police cruiser. RP 79, 83.	Mr. Christensen has been seized under the state and federal constitutions. The officers could easily have dispelled their suspicion that he was involved in the robbery by looking at his hair and tattoos.
The officers pat Mr. Christensen down and find a small gun. RP 47-48.	The officers frisk Mr. Christensen without any reason to believe that he is presently armed and dangerous.
The officers Mirandize Mr. Christensen and ask if he has a permit to carry a concealed weapon. Mr. Christensen says no. Ex. 4 at 03:19-04:00.	The officers have probable cause that Mr. Christensen has committed the civil infraction of carrying a concealed weapon without a permit. The officers cannot arrest him for a civil infraction.

The officers remove Mr. Christensen's hat and see that he is bald. Ex. 4 at 04:09.	The officers now know for sure that Mr. Christensen is not the robbery suspect.
The officers lock Mr. Christensen in the police cruiser. Ex. 4 at 04:35.	Mr. Christensen has been subjected to a full custodial arrest without probable cause to believe that he has committed a crime.
Several minutes later, Mr. Christensen admits that he has a prior felony conviction. Ex. 4 at 12:05.	The officers finally have probable cause to believe that Mr. Christensen has committed the offense for which they arrest him (unlawful possession of a firearm).

Even if the *Terry* stop of Mr. Christensen was justified, the officers went far beyond its permissible scope. *Saggers*, 182 Wn. App. at 847.

First, there was no reason to pat Mr. Christensen down for weapons. The officer should have immediately seen that his hair and tattoos did not match those of the suspect's description. Indeed, the suspect had cornrows and Mr. Christensen was completely bald. RP 36, 97. There was no independent reason to believe that Mr. Christensen was armed and dangerous to justify the frisk.

Second, even if the frisk was permissible, the police then locked Mr. Christensen in a police car *after* taking off his hat and learning that he definitely did not match the robbery suspect's description. Ex 4 at 04:09.

By doing so, the officers subjected Mr. Christensen to a full custodial arrest without probable cause to believe that he had committed a crime.

The officers violated Mr. Christensen's rights under the state and federal constitutions by searching him and by prolonging and intensifying his seizure without any justification for doing so.

1. The officers' suspicions that Mr. Christensen had committed the robbery could have been dispelled without patting him down.

Once they had stopped Mr. Christensen, the officers could have easily seen that he did not have cornrows and that his tattoo did not match the description of the robbery suspect. RP 36.

At that point, the justification for the stop had dissipated and the officers should have let Mr. Christensen go. Even if the initial detention of Mr. Christensen was lawful, the officers exceeded the scope of the permissible *Terry* stop by frisking him for weapons absent any indication that he was presently armed and dangerous.

A *Terry* stop must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Saggers*, 182 Wn. App. at 847 (citing *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986); *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984)).

The officers attempted to justify stopping Mr. Christensen based on his limited similarities with the description of the robbery suspect. RP 55, 79. Once they got a closer look, though, the officers would have easily seen that Mr. Christensen did not have cornrows (in fact, he was bald) and that his tattoos did not include the word “bitches.”

At that point, the justification for the interference had dissipated and the officers should have ended Mr. Christensen’s detention. *Saggers*, 182 Wn. App. at 847. There was no reason to continue the seizure or to pat him down.

An officer may conduct a frisk for weapons only when s/he possesses specific and articulable facts creating an objectively reasonable suspicion that a person is armed and presently dangerous. *State v. Harrington*, 167 Wn.2d 656, 668, 222 P.3d 92 (2009).

Here, even if the initial seizure was constitutional, the officers exceeded its permissible scope by frisking Mr. Christensen after their suspicion that he had committed the robbery was dispelled. *Saggers*, 182 Wn. App. at 847.

The court erred by denying Mr. Christensen’s motion to suppress. *Id.* His conviction must be reversed. *Id.*

2. The officers had no reason to lock Mr. Christensen in the police car. By that point, they knew that he was not the

robbery suspect and had reason to believe only that he had committed the civil infraction of carrying a concealed weapon without a permit.

Before the officers locked Mr. Christensen in the police cruiser, they removed his hat. Ex 4 at 04:09. Upon seeing his bald head, they knew for sure that he was not the robbery suspect (who had cornrows). RP 36. Still, the officers proceeded to lock Mr. Christensen in their police cruiser. Ex. 4 at 03:47-04:35.

Once the officers' suspicion that Mr. Christensen had been involved in the robbery dissipated in fact³, they no longer had any reason to hold him.

The only other potential reason for holding Mr. Christensen – his admission that he did not have a concealed weapons permit – constituted a civil infraction that could not justify his arrest.⁴ RCW 9A.050(1).

The police violated Mr. Christensen's rights under the Fourth Amendment and art. I, § 7 by locking him in their police cruiser absent

³ As argued above, even if the officers did not actually realize that Mr. Christensen was bald until they took his hat off, they could have easily found out and did not have the particularized facts necessary to conduct a *Terry* stop until they had done so.

⁴ Before frisking him, Officer Farris asks Mr. Christensen if he has any weapons and he said no. Ex 4 at 01:26 . Upon finding a weapon, the officer may have had reason to believe that Mr. Christensen had committed the misdemeanor offense of making a false statement to a police officer. RCW 9A.76.175.

A few second later, however, the officer tells Mr. Christensen that he is not under arrest. Ex 4 at 02:50. The officer affirmatively manifests that he does not intend to arrest Mr. Christensen for making a false statement. Accordingly, any reliance upon Mr. Christensen's denial that he had a weapon would be *post hoc* and pretextual in violation of art. I, § 7. *State v. Ladson*, 138 Wn.2d 343, 979 P.2d 833 (1999).

probable cause that he had committed a crime. *State v. Grande*, 164 Wn.2d 135, 141, 187 P.3d 248 (2008).

Once the police had handcuffed Mr. Christensen and locked him in their patrol car, he was arrested for constitutional purposes. *State v. Patton*, 167 Wn.2d 379, 387, 219 P.3d 651 (2009) (an arrest occurs when an officer manifests an intent to take a person into custody and actually seizes or detains him/her).

But the officers did not have probable cause to believe that Mr. Christensen had committed a crime when they locked him in the police cruiser.

Merely carrying a firearm does not provide reasonable suspicion (much less probable cause) of criminal activity. *Cardenas-Muratalla*, 179 Wn. App. at 317. Carrying a firearm is only evidence that a crime has been committed if it is carried in a manner that “either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.” *Cardenas-Muratalla*, 179 Wn. App. at 317 (citing RCW 9.41.270, RCW 9A.36.011, 021)

Carrying a gun without a concealed weapons permit is a civil infraction. RCW 9.41.050(1). The police are not permitted to arrest a person based only on a belief that s/he has committed only a civil

infraction. *State v. Kirwin*, 137 Wn. App. 387, 393, 153 P.3d 883 (2007) aff'd, 165 Wn.2d 818, 203 P.3d 1044 (2009).

At the time that the police locked Mr. Christensen in the patrol car, they knew that he was not the robbery suspect. There was no indication that he had carried the gun in an intimidating or alarming manner.

Indeed, his only known wrongdoing at that point was carrying the gun without a concealed weapons permit. The police were authorized to cite Mr. Christensen and send him on his way. RCW 9.41.050(1). The constitution prohibited them from locking him in their police car.

Even if the initial *Terry* stop and the weapons pat-down were justified, the officers went beyond their permissible scope by conducting a full custodial arrest. *Grande*, 164 Wn.2d at 141. The court erred by denying Mr. Christensen's suppression motion. *Id.*

3. The fact that the *Terry* stop went beyond its constitutionally-permitted scope presents manifest error affecting a constitutional right.

Manifest error affecting a constitutional right may be raised for the first time on review. RAP 2.5(a)(3).

The officers' actions beyond the permissible bounds of a *Terry* stop implicate Mr. Christensen's constitutional rights under the Fourth Amendment and art. I, § 7.

An error is manifest if it had “practical and identifiable consequences in the trial of the case.” *State v. Harris*, 154 Wn. App. 87, 94, 224 P.3d 830 (2010).

An error has practical and identifiable consequences if “given what the trial court knew at that time, the court could have corrected the error.” *State v. O’Hara*, 167 Wn.2d 91, 100, 217 P.3d 756 (2009), as corrected (Jan. 21, 2010).

Here, the dashcam video captured the entire encounter between the officers and Mr. Christensen. Ex 4. The video was played (apparently more than once) at the suppression hearing. RP 42-46, 53. The trial court had access to all of the information necessary to conclude that the officers exceeded the scope of a permissible *Terry* stop. *Id.*

The issue had practical and identifiable consequences at trial. *Id.* Absent the evidence of the gun, the state would not have had the evidence necessary to convict Mr. Christensen.

Mr. Christensen may raise for the first time on appeal that the officers exceeded the permissible scope of a *Terry* stop by patting him down and locking him in the patrol car. RAP 2.5(a)(3). This court should consider the merits of the issue. *Id.*

4. Defense counsel's failure to raise the issue regarding the scope of the *Terry* stop at the suppression hearing represents ineffective assistance of counsel.

In the alternative, Mr. Christensen's attorney provided ineffective assistance of counsel by failing to argue that officers went beyond the constitutional scope of a *Terry* stop at the suppression hearing. *State v. Hamilton*, 179 Wn. App. 870, 878, 320 P.3d 142 (2014).

To prevail on an ineffective assistance claim, the accused must show that counsel provided deficient representation that prejudiced the outcome of the case. *Id.* Representation is deficient if it falls below an objective standard of reasonableness. *Id.* Prejudice occurs if there is a reasonable probability that counsel's errors affected the outcome of the proceeding. *Id.*

There can be no conceivable legitimate strategy behind counsel's failure to move to suppress based on a violation of his/her client's constitutional rights. *Id.* at 880. Mr. Christensen's attorney provided ineffective assistance by failing to move to suppress the evidence against him based on the officers' actions beyond the permissible bounds of the *Terry* stop. *Id.*

Mr. Christensen was prejudiced by his attorney's deficient performance because the court would likely have granted such a motion. *Id.* at 882.

The trial court knew of the obvious differences between Mr. Christensen and the robbery suspect. Even if the court thought that those differences may not have been visible at first blush (thereby requiring a brief *Terry* stop), they were certainly noticeable without frisking Mr. Christensen for weapons.

Also, as outlined above, the court was able to view a video of the entire encounter between the officers and Mr. Christensen. *Id.* On the video, the officers remove Mr. Christensen's hat (revealing his baldness and concomitant lack of cornrows) before he is placed in the patrol car. Ex 4 at 04:09. They also do not learn that he is not legally allowed to possess a gun until well after he has been locked in the vehicle. Ex. 4 at 12:05.

The court would likely have granted a motion to suppress based on the officer's actions beyond the scope of the allowable *Terry* stop. *Id.* at 882. Mr. Christensen received ineffective assistance of counsel. *Id.*

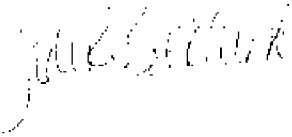
CONCLUSION

The officers violated Mr. Christensen's constitutional rights by seizing him without reasonable suspicion that he had committed a crime. Even if the initial *Terry* stop was constitutional, the officers exceeded its permissible bounds by frisking Mr. Christensen for weapons and locking

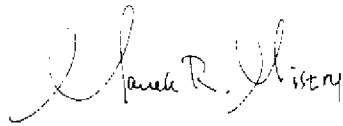
him in the patrol car long after they either should have known or actually knew that he was not the robbery suspect. Mr. Christensen's conviction must be reversed and the evidence against him suppressed on remand.

Respectfully submitted on November 10, 2015,

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CERTIFICATE OF SERVICE

I certify that on today's date:

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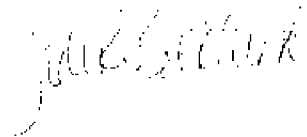
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Pierce County Prosecuting Attorney
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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on November 10, 2015.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

November 10, 2015 - 12:59 PM

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