

# High court constrains Seattle police anti-drug surveillance

BY LEVI PULKKINEN, SEATTLEPI.COM STAFF

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Seattle police and officers elsewhere can't watch from above and direct arrests of drug dealers, Washington's highest court has ruled.

Clearing a suspected drug dealer convicted after a misdemeanor arrest, the state Supreme Court found state law requires, in most misdemeanor cases, that the officer who personally viewed a crime arrest the suspect.

Thursday's [unanimous decision](#) likely complicates police efforts to push drug dealers out of areas of downtown Seattle popular with street drug dealers. It does not impact the arrests of suspected felons.

As noted in Thursday's decisions, Seattle police from time to time set up observation posts in downtown and Belltown. Officers manning the posts then direct police on the streets to suspected drug dealers or buyers after witnessing hand-to-hand drug deals.

While the court did not condemn the police practice, the justices said the Legislature must act if such arrests are to be allowed.

Issuing its decision, the court tossed out the conviction against a man accused of dealing crack cocaine on a Belltown street.

Because police couldn't see the drugs he was dealing from a second-story observation post, the man was arrested only on suspicion of "drug-traffic loitering" – a misdemeanor offense that amounts to waiting to buy or sell drugs in a public place. Police used the misdemeanor to search the man and recover the drugs used to charge him with a felony drug offense.

In the case before the court, a Seattle officer on the second floor of a Belltown building watched as the suspected drug dealer made three drug deals. While the officer couldn't tell what the man was handing to apparent drug buyers, the officer dispatched two other officers to arrest him on suspicion of drug-traffic loitering, the misdemeanor offense.

Officers arrested and searched the man, recovering crack cocaine and \$780 from his pockets. The man was subsequently convicted of a more serious crime – possession of cocaine with intent to deliver – and sentenced to three months in jail.

Clearing the man's conviction, the high court found state law mandates that only the officer who witnesses a misdemeanor may arrest a suspect. While several exemptions have been written into state law – one enables the arrest of suspected drunken drivers, for instance – none were pertinent to the case before the court.

Writing the lead opinion, Justice Steven Gonzalez did not dispute the practical advantages of the surveillance technique. But Gonzalez noted it was not the court's role to adjust the limits of police powers.

"If the time has come to allow a misdemeanor arrest by an officer who did not personally witness any misconduct, that development must start with the legislature," Gonzalez wrote in the lead opinion, which was joined by six other justices.

Concurring with Gonzalez, Chief Justice Barbara Madsen was more blunt in her praise for the police tactic.

Madsen described the surveillance as an "effective law enforcement tool, useful in urban areas, where offenses like the one here are common but rarely occur within the presence of the arresting officer."

The law was written to protect against mistaken arrests by an officer responding to a non-police witness's account of an event, Madsen said in the concurring opinion. Such a concern doesn't exist in cases where the observing party is a police officer who guides others to a suspect by radio and immediately identifies the suspect.

But Madsen agreed with Gonzalez that state law clearly doesn't support such arrests. She went on to advocate for a change in law.

The Legislature could amend the statute to provide that a law enforcement officer can arrest a person without a warrant in response to a request from another officer in whose presence the misdemeanor drug offense was committed," Madsen said in the concurring opinion.

"No harm to the policies underlying warrantless misdemeanor arrests would result because such arrests do not depend upon information obtained from nonpolice sources," she continued. "Such an amendment would also bring Washington into line with state laws that already permit this team enforcement approach with regard to misdemeanors."

Justices Charles W. Johnson, Susan Owens, Mary Fairhurst, James Johnson and Debra Stephens joined Gonzalez in the lead opinion, as did temporary justice Tom Chambers. Justice Charles Wiggins joined Madsen in the concurring opinion.