

High court overturns Seattle drug arrest

The state Supreme Court on Thursday overturned the conviction of a man who was arrested on drug charges because the officer who saw the alleged crime was not the arresting officer.

BY RACHEL LA CORTE; ASSOCIATED PRESS

Published: March 21, 2013 at 12:01 p.m. PDT— **Updated:** March 21, 2013 at 3:18 p.m. PDT

OLYMPIA, Wash. — The state Supreme Court on Thursday overturned the conviction of a man who was arrested on drug charges because the officer who saw the alleged crime was not the arresting officer.

Under state law, unless a specific statutory exception applies, only an officer who is present during the offense may arrest a suspect for a misdemeanor or a gross misdemeanor. Exemptions include traffic infractions where an officer can ask another to arrest the driver.

Gregorio Ortega was arrested in March 2009 in Seattle after an officer on the second floor of a building observed Ortega and another man purportedly appear to make three drug transactions. The officer in the building maintained radio contact with officers in a car nearby, described Ortega's activities and instructed them to arrest him. The officers found crack cocaine and cash on him, the court wrote.

In a unanimous ruling, the court reversed a Court of Appeals ruling in 2011 that upheld his 2009 conviction of possession of cocaine with intent to deliver, because it said the circumstances of his arrest went against state law.

"But for the unlawful arrest, there would have been no search, and the evidence found incident to that arrest should have been suppressed," wrote Justice Steven Gonzalez, who wrote the majority opinion.

Justices Charles Johnson, Susan Owens, Mary Fairhurst, James Johnson and Debra Stephens, and Justice pro tem Tom Chambers signed on to the majority opinion.

Chief Justice Barbara Madsen wrote a separate opinion in which she "reluctantly" concurred with the majority. She wrote that she did not take issue with the majority's analysis of state law and what is required for a warrantless arrest for a misdemeanor, "but rather from the fact that the statute precludes an arrest under the circumstances here."

She wrote that the type of team surveillance that was used in this particular case was "undoubtedly an otherwise effective tool for law enforcement to counter sometimes near-epidemic drug transactions, particularly in urban areas."

"It is also a more cost-effective enforcement mechanism than is required either by placing more individual officers in places where potential drug transactions can be witnessed or by seeking an arrest warrant in the case of gross misdemeanor drug offenses," she wrote.

Madsen said that her concern is that the result in this case is likely not what the Legislature intended with the statute, and she said she wrote her separate opinion "to encourage the legislature to consider an amendment to the statute if this is the case."

Justice Charlie Wiggins signed on to Madsen's concurrence.

In the majority opinion, Gonzalez noted that under current law, "simply because an officer is not present during the commission of a misdemeanor, and therefore may not arrest the suspect, does not mean that the officer is powerless to enforce the law."

"An officer who did not witness a misdemeanor may still stop and detain a person reasonably suspected of criminal activity," the court wrote, noting that the officers on the ground could have just detained Ortega until the officer who spotted the activity arrived to make the arrest.

However, the majority also noted that the Legislature has in the past amended the statutes, citing their action to change the law after a 1986 high court ruling that found that an officer could not validly arrest an intoxicated minor for possessing or consuming alcohol when the misdemeanor conduct did not occur in the officer's presence. The law was amended to specifically include the minor in possession statute, the court wrote.

"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.

Ortega's attorney, Nancy Collins, said that Ortega has already served his yearlong sentence and is no longer in jail. Dan Donohoe, a spokesman for King County Prosecutor's Office, said that prosecutors still need to review the opinion before determining their next steps in the case.

The case is State v. Bravo Ortega, docket number 85788-1.