

64321-5

64321-5

NO. 64321-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

TERRON THOMPSON,

Appellant.

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CLERK OF COURT  
KING COUNTY

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RICHARD EADIE

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**BRIEF OF RESPONDENT**

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A. ISSUES

1. A charging information is not constitutionally deficient if it can be fairly implied that the language of the information contains all the necessary elements for the crime. Here, Thompson's charging language included all of the elements for the offense of Bail Jumping. Was the charging information for the Bail Jumping charge proper?

2. When conducting a valid search of a residence, police may seize those on the premises who are a threat to officer safety. The police in this case were alerted that those at the house could be armed, and when police arrived, Thompson thrust his hand into his pocket as if grabbing something. Police then detained Thompson at gunpoint. Did the trial court properly admit the firearm Thompson reached for in his pocket?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY<sup>1</sup>

Defendant Terron Thompson was charged by amended information with Unlawful Possession of a Firearm in the First Degree and Bail Jumping. CP 101-02. A CrR 3.6 hearing was held, after which the court denied the motion to suppress and admitted the firearm that Thompson possessed. CP 74; 4RP 118. A jury found Thompson guilty as charged. CP 60-61. Thompson now appeals his conviction. CP 90-99.

2. CrR 3.6 FACTS

After arresting Shameka Thompson for unlawfully possessing a firearm in her car, Probation Community Corrections Specialist Kris Rogen planned a house-check to search Shameka's house in SeaTac, Washington. CP 72; 4RP 82-83. Rogen solicited the help of King County Sheriff's Deputies Aaron Thompson and Joseph Gagliardi, among others, to assist while Rogen performed

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<sup>1</sup> The Reports of Proceedings in this case are listed the same as those listed by the Appellant: 1RP (7/9/08), 2RP (7/9/08, 7/10/08, 2/5/09, 4/17/09, 4/22/09, 4/23/09, 4/30/09, 8/26/09, 9/16/09, 10/02/09), 3RP (7/14/08), 4RP (7/15/08 Suppression Hearing), 5RP (7/16/08), and 6RP (7/17/08).

this house-check. CP 73; 4RP 6-12, 41, 46. Rogen was concerned that -- because of Shameka's connection to guns and her association with firearm-carrying gang members -- there would be guns at the house and people who "weren't happy to see police." 4RP 12, 26, 29, 50-51, 79.

Rogen coordinated with police before the house-check so that a marked patrol car would be seen upon arriving at Shameka's residence. CP 73; 4RP 29-30, 49-50. Rogen arrived separately from, but at the same time as, the Sheriff's deputies. 4RP 86-88. Deputies Thompson and Gagliardi came in their own patrol vehicle, without lights or sirens. CP 73; 4RP 70.

When police arrived, Deputy Thompson came out of the patrol vehicle from the passenger-side door, closest to the residence, where he saw Defendant Terron Thompson<sup>2</sup> and another man in the front yard. CP 73; 4RP 54, 69-70. Gagliardi then walked around the patrol vehicle and joined Deputy Thompson. 4RP 79-80. The Defendant turned toward the police, began looking in all directions, and immediately thrust his hand into

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<sup>2</sup> Because of multiple individuals with the last name Thompson (Sheriff's Deputy Aaron Thompson, home owner Shameka Thompson, and Defendant Terron Thompson), the defendant will be referred to as "Thompson" or "the Defendant" throughout the brief, and the others will be referred to by their full titles or names.

his right jacket pocket. CP 73; 4RP 55. Deputies Thompson and Gagliardi issued commands for the Defendant to show his hands and take his hand out of his pocket. CP 73; 4RP 16, 70-71. The deputies were concerned for their safety. 4RP 19-20, 55-56.

The Defendant did not comply and appeared to be grabbing onto something in his pocket; police could not see the Defendant's other hand. CP 73; 4RP 43, 74, 79-80. Deputy Thompson raised his firearm and pointed it at the Defendant. CP 73; 4RP 55, 71. The Defendant backed toward the front door of the house. CP 73; 4RP 16-18, 54-56. The Defendant then took a silver handgun out of his right pocket and tossed the gun into the house. CP 73; 4RP 18-20, 72-76. Police then handcuffed the Defendant. CP 73; 4RP 20, 58. The firearm the Defendant tossed into the house was recovered. 4RP 75-78. Because the Defendant had been previously convicted of First Degree Robbery and failed to appear for court October 12, 2007, a jury convicted him of First Degree Unlawful Possession of a Firearm and Bail Jumping. CP 60-61, 101-02.

C. ARGUMENT

1. THE CHARGING INFORMATION WAS PROPER.

Thompson contends that the charging information did not properly advise him of all the necessary elements for his Bail Jumping charge. This claim is meritless.

A charging document must include all of the essential elements of a crime. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). When a charging document is challenged for the first time on appeal, it is liberally construed in favor of validity. Id. at 105. Under the liberal construction rule, where a missing element may be fairly implied from the language within the information, it will be upheld as proper. Id. at 104.

In order to establish that an information is insufficient, a defendant must show: (1) the necessary elements of the offense are not in the information in any form, and (2) how the defendant was prejudiced by the faulty information. State v. Ralph, 85 Wn. App. 82, 85, 930 P.2d 1235 (1997) (citing Kjorsvik, 117 Wn.2d at 105-06).

The crime of Bail Jumping is statutorily defined as follows:

(1) Any person having been . . . admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state . . .

and who fails to appear . . . as required is guilty of bail jumping . . .

(3) Bail jumping is:

(a) A class A felony if the person was held for, charged with, or convicted of murder in the first degree;

(b) A class B felony if the person was held for, charged with, or convicted of a class A felony other than murder in the first degree;

(c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony;

(d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor.

RCW 9A.76.170 (alternative language omitted).

Thus, as it relates to this case, the following are the statutory elements that must appear in the information: (1) the defendant has been charged with a criminal offense; (2) the defendant has been admitted to bail; (3) the defendant had knowledge of the requirement of a subsequent personal appearance before the court; and (4) the defendant failed to appear as required.

The pertinent part of the information challenged by Thompson relates to Count Two of the second amended information, which stated:

That the defendant TERRON LEE THOMPSON in King County, Washington, on or about October 12, 2007, being charged with Unlawful Possession of a

Firearm in the First Degree, a Class B felony, having been admitted to bail, and with knowledge of the requirement of a personal appearance before the court, did fail to appear;

Contrary to RCW 9A.76.170, and against the peace and dignity of the State of Washington.

CP 102.

Accordingly, the information advised that on October 12, 2007: (1) the defendant had been charged with a criminal offense (Unlawful Possession of a Firearm, a Class B Felony); (2) the defendant had been admitted to bail; (3) the defendant had knowledge of the requirement of a subsequent personal appearance before the court; and (4) the defendant failed to appear as required.

The information advises Thompson of each statutory element in full. See RCW 9A.76.170; CP 102. As such, Thompson was fully advised in the information as to the essential elements of his Bail Jumping charge.

Thompson claims that the information was constitutionally deficient because "The information alleged that Mr. Thompson had knowledge of a requirement of a subsequent personal appearance, but did not allege he had notice he was supposed to appear on the specific date in question (October 12, 2007)." Appellant's Brief at 7.

This argument fails because a defendant is only required to know through notice that he has a subsequent court date, not to have knowledge on the specific date in the question.

Thompson cites State v. Fredrick, 123 Wn. App. 347, 353, 97 P.3d 47 (2004), and State v. Carver, 122 Wn. App. 300, 306, 93 P.3d 947 (2004), for the general principle that a defendant must receive notice of his subsequent court date. But the fact Thompson needed to know that he was required to personally appear before the court was included in the charging language. CP 102. The information stated “That the defendant TERRON LEE THOMPSON in King County, Washington, on or about October 12, 2007 . . . with knowledge of the requirement of a personal appearance before the court, did fail to appear.” CP 102. The knowledge element was therefore listed in the information.

Contrary to Thompson’s claim, “Knowledge on the specific date of the hearing is not an element of the crime.” Carver, 122 Wn. App. at 305-06 (quoting State v. Ball, 97 Wn. App. 534, 987 P.2d 632 (1999) (the State must prove only that the defendant was given notice of his court date, not that he had knowledge of this date every day thereafter) (citing State v. Ball, 97 Wn. App. 534, 536, 987 P.2d 632 (1999)). Thompson’s argument that

Carver's information needed to "allege he had notice he was supposed to appear on the specific date in question" is wrong. Appellant's Brief at 7.

Even if this Court found that this specific date was a required part of the knowledge element, since Thompson is challenging the information for the first time on appeal, the liberal construction rule applies and any "missing" element may be fairly implied from the language of the information. Kjorsvik, 117 Wn.2d at 104. Thompson would still need to establish that the date of the hearing was not in the information in any form. See Ralph, 85 Wn. App. at 85.

Thompson cannot establish this omission because the information expressly advised that this offense was committed "on or about October 12, 2007." CP 102. "October 12, 2007," is imparted throughout the information, since it was on this date that Thompson failed to appear after being charged with a felony and being admitted to bail. CP 102. Thompson's failure to appear on that date was made "with knowledge of the requirement of a subsequent personal appearance before the court." CP 102.

It can fairly be implied that Thompson's "knowledge of the requirement of a subsequent personal appearance before the

court” related to the court hearing on October 12, 2007. CP 102. Any fair construction of the information shows that Thompson was advised that he was supposed to appear on October 12, 2007, instead of some other hearing. Thompson’s claim fails since he cannot establish that the necessary elements of the offense are not in the information in any form. See Ralph, 85 Wn. App. at 85.

Finally, even if this Court found that a fair construction of this language contained in the information did not fully advise of the knowledge element of the offense, Thompson cannot establish that prejudice resulted. If there is some language in the document related to the necessary elements of the offense, however inartful, the defendant must establish prejudice. State v. McCarthy, 140 Wn.2d 420, 425-26, 998 P.2d 296 (2000) (only when a necessary element is omitted and not found in the document is there no question of prejudice).

Thompson does not even attempt to claim that he suffered any prejudice. Indeed, Thompson was given discovery, which was admitted as evidence at trial that Thompson had notice of this subsequent hearing of October 12, 2007. Supp. CP \_\_ (Sub 122A, Ex. 13, 14). No prejudice can result here because the elements are fully represented within the information.

2. THE DETENTION OF THOMPSON WAS LAWFUL.

Thompson argues that he was unlawfully seized and thus Thompson was detained because he was a safety threat to officers and others during a lawful search of a residence. His seizure was valid and his firearm was properly admitted into evidence.

“All seizures of the person, even those involving only brief detentions, must be tested against the Fourth Amendment guaranty of freedom from unreasonable searches and seizures.” State v. Thompson, 93 Wn.2d 838, 840, 613 P.2d 525 (1980); see also Florida v. Royer, 460 U.S. 491, 498, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983); State v. Richardson, 64 Wn. App. 693, 697, 825 P.2d 754 (1992).

Officers may lawfully detain occupants in the driveway of a home being lawfully searched if those individuals seized are a threat to someone’s safety. State v. Smith, 145 Wn. App. 268, 271-78, 187 P.3d 768 (2008). This safety threat must be based on more than the person being merely present at the scene of a valid search. Smith, 145 Wn. App. at 276 (holding mere presence is not enough to detain, since “presence plus” requires independent factors that raise a reasonable articulable suspicion the suspect is armed and dangerous) (citing State v. Broadnax, 98 Wn.2d 289,

304, 654 P.2d 96 (1982)). Police must have a reasonable suspicion that the person is armed before detaining that suspect as a safety threat. Smith, 145 Wn. App. at 276 (citing Ybarra v. Illinois, 444 U.S. 85, 92-94, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979)).

The legal issue of whether reasonable suspicion exists is reviewed de novo by this Court. State v. Bray, 143 Wn. App. 148, 152, 177 P.3d 154 (2008). Ultimately, this Court must balance the governmental interests involved against the defendant's privacy interests.<sup>3</sup> Id. However, where an officer's conduct is connected to safety concerns rather than investigatory goals, a court is particularly reluctant to substitute its own judgment for that of the officer in determining whether a seizure was justified. State v. Adams, 144 Wn. App. 100, 104, 181 P.3d 37 (2008) (citing State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993)).

"Officers in the field must routinely look at the potentially criminal roles of individuals in context, not in isolation." State v.

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<sup>3</sup> There is a government interest in ensuring this safety of police officers as they perform their duties. Terry v. Ohio, 392 U.S. 1, 23, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). "American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded." Id. "Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives." Id.

Horrace, 144 Wn.2d 386, 397, 28 P.3d 753 (2001). An officer need not be absolutely certain that the individual seized was armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Id. at 396 (citing State v. Belieu, 112 Wn.2d 587, 602, 773 P.2d 46 (1989)).

Challenged findings that are supported by substantial evidence are binding, and where the findings are unchallenged, they are verities on appeal. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Thompson has not challenged any factual findings in this case. In fact, they were not even disputed below. CP 74. Thus, they are verities on appeal.

A probation officer with the Department of Corrections asked Deputies Joseph Gagliardi and Aaron Thompson to provide security for a house-check for Shameka. CP 73; 4RP 6-12, 41, 46. Earlier that week Shameka was found to have a gun in her car. CP 72; 4RP 48. The probation officer alerted deputies that there were likely guns in the house. 4RP 12, 26, 29. Shameka associated with firearm-carrying gang members who would likely be there, as well. 4RP 50-51, 79. Due to these concerns, before arriving at the house, the probation officers coordinated with

deputies so that their marked patrol car would be immediately visible upon their arrival. CP 73; 4RP 29-30, 49-50.

The trial court found the following course of events occurred. CP 72. The police arrived without any lights or siren. CP 73 (Finding of Fact i). Deputies Thompson and Gagliardi parked the patrol car and approached the residence on foot. CP 73 (Finding of Fact j). Outside the residence, these deputies saw Thompson with another man. CP 73 (Finding of Fact k). Thompson looked surprised and alarmed to see police, began looking in all directions, and immediately thrust his right hand into his pocket. CP 73 (Finding of Fact l and m). The deputies drew their guns and instructed Thompson to show his hands. CP 73 (Finding of Fact n). The other man present complied and showed his hands. CP 73 (Finding of Fact o). Thompson, however, kept his right hand in his pocket. CP 73 (Finding of Fact o). Both of Thompson's hands were not visible to the officers and Thompson began to back up toward the front door of the house. CP 73 (Finding of Fact o). Thompson then removed his right hand from his pocket, took out a gun, and tossed it into the residence. CP 73 (Finding of Fact p). Police took Thompson into custody and secured the firearm. CP 73 (Finding of Fact q).

When police drew their guns and seized Thompson they were aware that there would be guns on the premises, and that the people at the home may be armed. Indeed, the whole reason police provided security was due to probation's safety concerns about guns at the house. These safety threats were in the mind of the officers as they arrived at the scene. Thompson individualized the suspicion to himself when he thrust his hands into his pocket.

The manner in which Thompson reached into his pocket appeared to police that he was grabbing onto something. 4RP 74. A reasonably prudent man would be warranted in the belief that his safety or that of others was in danger as a result of Thompson's hostile actions, in light of the surrounding circumstances. See Horrace, 144 Wn.2d at 396. It was reasonable to suspect that Thompson was armed, and the fact that he ultimately held a firearm in that pocket demonstrates how the clothes he wore could effectively conceal such a weapon. Police appropriately detained Thompson at gunpoint to ensure the safety of themselves and others.

Thompson argues that there was no reasonable suspicion that he committed a crime, that police prematurely detained him before establishing that he was a safety threat, and that his

detention at gunpoint was unreasonable. Because Thompson's detention was appropriate due to the individualized suspicion that he was armed, these claims fail.

First, Thompson claims that when he was detained at gunpoint there was no reasonable suspicion that he had committed a crime. However, police detained Thompson not to investigate a crime but instead because he was a safety threat to the officers and others at the scene. During a lawful search of a residence, police may detain those in the driveway of the home without reasonable suspicion of criminal activity, so long as those seized are a threat to someone's safety. Smith, 145 Wn. App. at 271-78. Accordingly, the issue is not a matter of criminal suspicion but whether there was reasonable suspicion that Thompson was armed when he was detained. There was reason to suspect Thompson was armed after Thompson thrust his hand into his pocket, given the circumstances, discussed above.

Next, Thompson argues that he was detained prematurely. While he does not challenge any factual findings in this case, Thompson does say the court erred in concluding that Thompson was not seized until gunpoint, before "Thompson did anything." Petitioner's Brief at 1. Specifically, he argues that police first yelled

at Thompson to show his hands *before* he put his hands in his pockets.<sup>4</sup> Thompson mentions this argument in passing though his assignment of error regarding the court's legal conclusion. Thompson's argument that there was a seizure before his furtive movements is not supported by the record.

The trial court rejected the version of events Thompson now relies upon; the court held that before any commands by police, "the defendant immediately thrust his right hand into his pocket and began looking about in all directions."<sup>5</sup> CP 73; 4RP 116. The court's factual findings are supported by substantial evidence.<sup>6</sup> Deputy Thompson testified that the Defendant was free to leave

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<sup>4</sup> Thompson refers to this in his briefing as the "second seizure," though the court did not define any seizure but the first seizure at gunpoint. Appellant's Brief at 13.

<sup>5</sup> In its incorporated oral findings, the trial court stated that the Defendant put his hand into his pocket before commands by the deputies for the Defendant and the other man to "show their hands." 4RP 116.

<sup>6</sup> While Thompson has not challenged the court's written or oral findings that the commands came after the Defendant's furtive actions, and thus these findings are verities, the substantial evidence of this case also makes them binding. See O'Neill, 148 Wn. at 571.

until Deputy Thompson saw the Defendant's hand go into his pocket. 4RP 70-73. Before the Defendant put his hand in his pocket, Deputy Thompson could view both of the Defendant's hands. 4RP 70. The manner that the Defendant put his hand in his pocket caught Deputy Thompson's attention. 4RP 74. It appeared to Deputy Thompson as if the Defendant grabbed onto something. 4RP 74. Deputy Thompson approached the house moments before Deputy Gagliardi, who came from behind. 4RP 70. Deputy Gagliardi had just joined Deputy Thompson's side when Deputy Thompson first saw the Defendant reach into his pocket. 4RP 79-80.

This furtive move by the Defendant was within five seconds after Deputy Thompson first arrived at the residence and preceded his commands to the Defendant. 4RP 70-73. It was after the Defendant put his hand into his pocket that Deputy Thompson told the Defendant for the first time, "Police -- show your hands -- take your hand out of your pocket." 4RP 70-71. At this point Deputy Thompson raised his shotgun and pointed it at the Defendant. 4RP 71. Deputy Thompson was focused throughout the entire contact on the Defendant's hands and the Defendant's possession of a handgun. 4RP 74-75.

Defendant Thompson argues that because Gagliardi testified that the deputies started issuing commands “when we got out of the car,” this means that the commands began before any police saw any of the defendant’s furtive movements. 4RP 16. However, Gagliardi’s general summary of their actions must be reviewed in the context of all the other testimony and his personal perspective. In fact, Gagliardi had to come from around the driver’s side of the car to join Deputy Thompson. 4RP 70. When Gagliardi first remembered seeing the Defendant’s hands, one hand was already in the Defendant’s pocket and the Defendant was backing toward the house. 4RP 18. Gagliardi did not appear as focused on the Defendant’s hands as Deputy Thompson. 4RP 18-19, 74-75. The probation officer, who arrived on-scene at the same time as the deputies, saw the events transpire and recalled that the commands from the police came after the Defendant put his hand into his pocket. 4RP 88-89. As such, the trial court’s oral and written findings that the Defendant had thrust his hand into his pocket before any commands by police are supported by the evidence and are thus binding on appeal. Because police detained the Defendant after he exhibited a safety threat, his seizure was lawful.

Finally, Thompson argues that his detention, even if justified, was unreasonable and “therefore constituted an arrest justifiable only by probable cause.” Appellant’s Brief at 16. This claim is meritless.

Thompson cites U.S. v. Robertson, 833 F.2d 777, 781 (9<sup>th</sup> Cir. 1987), which relies on the federal standard that a Terry stop can turn an unreasonable criminal detention into a formal arrest, at which point probable cause for arrest is then required. In Robertson, police stopped and arrested a woman at gunpoint merely for “walking down a path leading from a house in which criminal activity was suspected.” Id. at 782. Robertson is inapposite because it involved a detention to investigate criminal activity, not officer safety. Id. at 781. The Robertson Court clarified that in their case “the officers had no specific information that [the woman arrested] was armed and dangerous.” Id. at 782. The Ninth Circuit explained the difference between detaining someone at gunpoint for concern of personal safety, which has long been permitted, and detention at gunpoint for reasons other than personal safety. Id. at 780 (citing U.S. v. Ramos-Zaragosa, 516 F.2d 141, 144 (9<sup>th</sup> Cir. 1975)); U.S. v. Greene, 783 F.2d 1364, 1367-68 (9<sup>th</sup> Cir. 1986) (holding that the use of force will not convert

a detention into an arrest if it occurs under circumstances justifying fears of personal safety).

The use of force by officers, including the use of firearms, is proper if “based on ‘particular facts’ from which reasonable inferences of danger may be drawn.” State v. Belieu, 112 Wn.2d 587, 599, 773 P.2d 46 (1999) (quoting Sibron v. New York, 392 U.S. 40, 64, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1986)). “The force used should bear some reasonable proportionate relationship to the threat apprehended by the officers.” Belieu, 112 Wn.2d at 599.

Here, police detained Thompson at gunpoint. This defensive use of firearms by police was proportionate because police believed that firearms would be located at the house. Police knew that the owner of the house associated with gang members who carried guns, and that the house owner herself was associated with firearms. When police arrived at the residence, Thompson looked at the police, thrust his hand into his pocket, appeared to grab something and failed to comply with officer commands. There was reasonable suspicion that Thompson was armed. Police were justified in detaining him at gunpoint. The gun Thompson had in his pocket and ultimately threw to the ground when confronted by

police was properly admitted by the court, due to the safety threat Thompson posed to the officers.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Thompson's convictions for First Degree Unlawful Possession of a Firearm and Bail Jumping.

DATED this 24<sup>th</sup> day of June, 2010.

Respectfully submitted,

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**FILED**  
KING COUNTY, WASHINGTON

OCT 22 2008

SUPERIOR COURT CLERK  
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DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 7-1-05134-8 SEA

vs.

TERRON THOMPSON,

Defendant,

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.6  
MOTION TO SUPPRESS PHYSICAL,  
ORAL OR IDENTIFICATION  
EVIDENCE

A hearing on the admissibility of physical, oral, or identification evidence began on July 9, 2008, before the Honorable Judge Richard Eadie. After considering the evidence submitted by the parties and hearing argument, to wit: testimony of Corrections Officer Kris Rongen, King County Detective Aaron Thompson, and King County Detective Joseph Gagliardi, the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

1. THE UNDISPUTED FACTS:

- a. On April 26, 2007, Shameka Thompson, an active Department of Corrections (hereinafter "DOC") probationer, was arrested for violating probation at the DOC Office in Burien, Washington. The violation for which she was arrested involved a gun and occurred on April 21, 2007.
- b. A search of her car conducted incident to her arrest revealed a handgun under the front passenger's seat, which was the seat immediately in front of Ms. Thompson.
- c. DOC Officer Rongen made a decision to search Ms. Thompson's listed home address for additional firearms.

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1

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- 1 d. DOC Officer Rongen asked for the assistance of King County Sheriff Deputies  
2 Thompson, Gagliardi, and Paul to aid him in securing the residence.
- 3 e. All parties met at a hospital near the listed address of Ms. Thompson for a briefing  
4 session before approaching the home in a caravan style of 3 or 4 cars.
- 5 f. Deputies Thompson and Gagliardi drove in the same marked patrol car. They  
6 proceeded to the residence first.
- 7 g. DOC Officer Kris Rongen followed in an unmarked car. Ms. Thompson was  
8 transported in a DOC van.
- 9 h. Deputy Paul drove a marked SeaTac Police car.
- 10 i. None of the officers employed lights or sirens when approaching the residence  
11 located at 3017 South 133<sup>rd</sup> Street.
- 12 j. Deputies Thompson and Gagliardi arrived at the residence first. They parked the car  
13 several feet from the house. They got out of their police car and began to approach  
14 the residence on foot.
- 15 k. The defendant was standing outside the residence near the carport area. Just a few  
16 feet from the defendant was a minor named John Williams.
- 17 l. The defendant looked surprised and alarmed when he saw the police.
- 18 m. The defendant immediately thrust his right hand into his pocket and began looking  
19 about in all directions.
- 20 n. The deputies drew their guns and instructed the defendant and John Williams to  
21 show their hands.
- 22 o. Mr. Williams complied and showed his hands. The defendant kept his hand in his  
23 pocket. His left hand was also not visible. He backed up toward the house and up a  
short flight of stairs until he reached the threshold of the front door.
- p. Still facing the officers, the defendant fell or eased himself onto the landing at the  
top of the stairwell where he leaned back in front of the front door of the home. He  
then removed his right hand from his pocket and tossed a gun into the residence.
- q. The defendant was placed into handcuffs immediately after he tossed the gun. An  
immediate search of the front room of the home uncovered a firearm, the  
defendant's identification, a cell phone, and a gift card lying on the floor of the front  
room just beyond the front door. The room was nearly empty apart from these  
items.

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2. THE DISPUTED FACTS:

There are no disputed facts.

3. FINDINGS AS TO THE DISPUTED FACTS:

n/a

4. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE SOUGHT TO BE SUPPRESSED:

a. PHYSICAL EVIDENCE

- i.) The firearm, gift card, identification card, and cell phone are admissible because the officers properly seized the defendant once they observed him engage in furtive movements and developed suspicions of criminal activity.

In addition to the above written findings and conclusions, the court incorporates by reference its oral findings and conclusions.

Signed this 22 day of <sup>Oct.</sup> July, 2008.

*Reynold D. Erdie*

JUDGE

Presented by:

*R. [Signature]* 32027  
Deputy Prosecuting Attorney

*approved via phone*  
Attorney for Defendant

WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW - 3

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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 Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, Washington 98101, containing a copy of the Respondent's Brief, in STATE V. TERRON THOMPSON, Cause No. 60474-1-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.

  
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Name  
Done in Seattle, Washington

\_\_\_\_\_

06/24/10

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