

71608-5

71608-5

No. 71608-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MOHAMED AHMED,

Appellant.

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

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APPELLANT'S OPENING BRIEF

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## **A. INTRODUCTION**

The defendant was convicted of third degree theft for taking small wine bottles from a convenience store. Shortly after a store clerk called 911, the police stopped the defendant, who was very intoxicated. During a pat-down, an officer felt a hard, cold, cylindrical object inside the defendant's pants pocket. While the officer believed it was some sort of beverage and not a weapon, he removed it to examine it in detail. The beverage was a small wine bottle matching what had been reportedly taken. The defendant was arrested and quickly read his rights. Immediately thereafter and without any acknowledgement that the defendant understood his rights, police interrogated the defendant. Because the officer exceeded the permissible scope of a protective frisk and the defendant did not waive his rights, the court erred in denying the defendant's motions to suppress. This Court should reverse and remand for a new a trial.

## **B. ASSIGNMENTS OF ERROR**

1. The court erred in denying the defendant's motion to suppress evidence under CrR 3.6.
2. The court erred in admitting statements the defendant made to the police after his arrest.

3. After conducting suppression hearings, the court erred by not entering written findings of fact and conclusions of law.

### **C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Article 1, section 7 permits an officer to conduct a brief frisk, limited to a search for weapons. If an officer feels a hard object and suspects it may be a weapon, an officer may remove the object to determine if it is a weapon. During a frisk, the officer noticed the defendant's pants pockets were bulging and felt a hard, cold, cylindrical object that was sweating—a canned or bottled beverage. While not thinking that it was a weapon or could be used as a weapon, the officer removed it from the defendant's pocket. It was a small wine bottle, matching what was reportedly stolen. Police arrested the defendant and found other small wine bottles on his person. Did the court err in denying the defendant's motion to suppress?

2. A statement made under custodial interrogation is admissible only if a person is advised of and waives his rights. Upon arresting the defendant, an officer read the defendant his Miranda rights and asked whether the defendant understood his rights. The defendant, intoxicated, did not respond. Without obtaining acknowledgement that the defendant understood his rights, the police then immediately interrogated the defendant. The defendant responded to the questioning. Did the trial

court err in ruling that the defendant waived Miranda and in admitting the statements?

3. After conducting a hearing under CrR 3.5 or CrR 3.6, the court must enter findings of fact and conclusions of law. The court held these hearings, but did not enter written findings or conclusions. Should this Court remand for entry of written findings and conclusions?

#### **D. STATEMENT OF THE CASE**

According to evidence at the pretrial suppression hearings, Officer Lloyd Harris was dispatched to investigate a reported shoplift of beer at a 7-Eleven shortly before about 10:00 p.m. on August 21, 2013. 1/28/14RP 7-10, 15. Later, the dispatch was updated to robbery after one of the store clerks said the suspect threatened him with a knife. 1/28/14RP 12, 18. Harris also learned it was reportedly small bottles of wine that were taken, not beer. 1/28/14RP 10.

In the parking lot of a bowling alley near the 7-Eleven, Officer Harris stopped Mohamed Ahmed because Ahmed matched the description of the suspect. 1/28/14RP 12, 19. Ahmed was talking with two other men in the parking lot. 1/28/14RP 17. Officer Harris permitted the two other men to walk away. 1/28/14RP 35. Ahmed was very intoxicated. 1/28/14RP 18, 94, 165. Officer Harris repeatedly demanded to see

Ahmed's identification as he waited for backup to arrive. 1/28/14RP 20; Ex. 21 (Pretrial Ex. 1).<sup>1</sup>

About one minute later, Officer Jacob Leenstra arrived. Ex. 21, 25 (Pretrial Ex. 2).<sup>2</sup> The officers immediately detained Ahmed for being "uncooperative" and handcuffed him. 1/28/14RP 20-21, 94; Ex. 25. Harris, concerned that Ahmed might have a knife, frisked Ahmed. 1/28/14RP 22; Ex. 25.

Officer Harris noticed that Ahmed's front pants pockets were bulging. 1/28/14RP 18, 22. Feeling Ahmed's front left pocket, Harris felt an object inside that was cold and cylindrical. 1/28/14RP 22, 81. The object was not protruding from the pocket. 1/28/14RP 83. Harris placed his hand in Ahmed's pocket and felt the object, which was "sweating." 1/28/14RP 83-84. Harris believed the object was some kind of beverage, possibly a soda can or soda bottle. 1/28/14RP 80, 85. Harris did not

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<sup>1</sup> Exhibit 21 is a CD with video files. It has a dash-cam video from Officer Harris. See 1/28/14RP 14. The file name of the pertinent video is "7403@20130821220222." It was admitted as pretrial exhibit 1. At trial, this became exhibit 14. However, when counsel obtained the exhibits, exhibits 14 and 21 had the incorrect CDs inside. Exhibit 21 had the CD that was supposed to be exhibit 14 while exhibit 14 had the CD that was supposed to be exhibit 21. Both exhibits have been designated. Since the correct CD is actually in the exhibit marked as exhibit 21, citations are to it rather than to exhibit 14.

<sup>2</sup> Exhibit 25 is also a CD with video files. It has a dash-cam video from Officer Leenstra. 1/28/14RP 100-01. The file name with the video is "7479@20130821220247." It was admitted as pretrial exhibit 2. This became exhibit 25 at trial.

testify that canned or bottled beverages were weapons. 1/28/14RP 22. Still, because he was investigating a robbery of small wine bottles, Harris removed the beverage to examine it in detail. 1/28/14RP 85, 120-21, 169. The object was a small wine bottle, about 7 inches tall. 1/28/14RP 79. Harris examined it and exclaimed that Ahmed had wine. 1/28/14RP 82, 126; Ex 25. Officer Leenstra identified the wine as the same type that was taken. Ex. 25. They arrested Ahmed. 1/28/14RP 82, 149; Ex. 25.

The video shows Officer Harris pulling out the wine bottle about 10 seconds after Officer Leenstra handcuffs Ahmed. Ex. 25. Right after Ahmed is handcuffed, Harris can be heard on the video saying, “here’s the deal, somebody just robbed alcohol from a 7-Eleven, and you match the description. So until we figure out whether it’s you or not, we’re going to, and the fact that you have a bottle of wine in your pocket.” Ex. 25. Leenstra then immediately says, “That is the exact bottle of wine that was stolen. Let’s do Miranda.” Ex. 25.

Police found two more small wine bottles on Ahmed. 1/28/14RP 104, 147-48. Ahmed told police he was not in the 7-Eleven and that he had bought the wine for \$20. 1/28/14RP 27. The officers did not find a knife, or any weapon, on Ahmed. 1/28/14RP 105. After arresting Ahmed, another officer brought one of the store clerks to the scene, who identified Ahmed in a showup. 1/28/14RP 23-24.

The State charged Ahmed with second degree robbery. CP 1. He waived his right to counsel and represented himself. CP 7; 11/7/13RP 2.

Ahmed moved to suppress evidence of the wine and statements he made to police. CP 10-11, 40, 43-46. The court denied his motions. 1/29/14RP 61-62, 77-86, 128-30. The court did not enter written findings of fact or conclusions of law.

At trial, Ahmed denied the allegation he had threatened a clerk. 2/5/2014RP 41. Consistent with his own pretrial testimony, Ahmed admitted that he had taken the wine without paying. 1/29/14RP 20; 2/5/2014RP 20. However, he had only done so because he had forgotten his wallet at the bowling alley and was concerned the wine would sell out. 1/29/14RP 20; 2/5/2014RP 19-20, 23. He intended to return with his wallet and pay for the wine. 1/29/14RP 26-27; 2/5/2014RP 20-21, 39.

The jury found Ahmed not guilty of robbery, but convicted him of the lesser included offense of third degree theft. CP 82-83. Ahmed appeals.

## **E. ARGUMENT**

### **1. The court erred in denying the defendant's motion to suppress evidence because the police exceeded the permissible scope of a protective frisk.**

Ahmed moved to suppress the evidence of the wine and statements he made to police on the basis that the frisk of his person was not limited

to protective purposes. CP 44; 1/29/14RP 72-73. Because the police exceeded the permissible scope of the protective frisk, the trial court erred in denying Ahmed's motion.

**a. A frisk for weapons is strictly limited to protective purposes. It is not a search for evidence.**

Article 1, section 7 of the Washington Constitution commands that, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. 1, § 7. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV. Warrantless searches and seizures are per se unreasonable, and violate these provisions. State v. Russell, 180 Wn.2d 860, 867, 330 P.3d 151 (2014). "The State bears a heavy burden to prove by clear and convincing evidence that a warrantless search falls within one of those exceptions." Russell, 180 Wn.2d at 867.

One exception to the warrant requirement is the stop and frisk exception, also called the "Terry" exception. Russell, 180 Wn.2d at 867; Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Under this exception, law enforcement may stop and frisk a person for weapons when there is reasonable suspicion of criminal activity and there

are specific and articulable reasons to believe the person is armed and dangerous. State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

The scope of the frisk or pat-down is strictly limited to protective purposes. Garvin, 166 Wn.2d at 250. It must be brief and nonintrusive. Garvin, 166 Wn.2d at 254. “If the officer feels an item of questionable identity that has the size and density such that it might or might not be a weapon, the officer may only take such action as is necessary to examine such object.” State v. Hudson, 124 Wn.2d 107, 113, 874 P.2d 160 (1994). Once the officer determines that the object is not a weapon, the officer’s limited authority to intrude into a person’s privacy is spent. Russell, 180 Wn.2d 869-70; State v. Allen, 93 Wn.2d 170, 173, 606 P.2d 1235 (1980). “During the course of a protective frisk, police may not intentionally seize items they know not to be weapons.” State v. Fowler, 76 Wn. App. 168, 173, 883 P.2d 338 (1994). “If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed.” Minnesota v. Dickerson, 508 U.S. 366, 373, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993).

**b. By removing what the officer did not think was a weapon and examining it in detail, the officer exceeded the permissible scope of the protective frisk.**

Officer Harris exceeded the scope of a lawful frisk. Harris testified that he noticed Ahmed's pockets were bulging and was concerned that Ahmed might have a knife. 1/28/14RP 22, 35. Officers Harris and Leenstra handcuffed Ahmed. 1/28/14RP 21, 60. Harris then began to frisk Ahmed. 1/28/14RP 60. Feeling Ahmed's pants pocket, he felt a round, cylindrical object that was cold to the touch. 1/28/14RP 80-81. Feeling the object itself, Harris testified the object was "sweating." 1/28/14RP 83-84. Harris did not testify that he thought this might be a weapon. 1/28/14RP 80. Neither did he testify that he instantly recognized the object as a wine bottle. Instead, he thought it was a beverage of sorts, possibly a soda can, though he suspected it might be the wine reported stolen from the store:

When I did a frisk there was a round cylindrical object in your pocket which, it could have been a soda can, but based on the fact that we were talking with somebody who possibly robbed 7-Eleven with small wine bottles, that would - - someone would tend to reason that that could possibly be a wine bottle, plus when you went into your - - the outside of the Defendant's pants were cold to the touch.

1/28/14RP 80. Harris then examined the object and determined that it was a bottle of wine. Ex. 25; 1/28/14RP 80, 82. While Harris could not recall

if he removed the bottle completely from Ahmed's pocket, he admitted he must have lifted it out enough to determine it was a bottle of wine:

I can't tell you if I pulled - - removed the entire bottle from - - but I knew there was a cylindrical object in his pocket. When the pocket was open I saw the screw thing - - the cap - - the screw cap, but I wouldn't have known it was a bottle of wine unless I at least lifted it up. So, I mean, it could have been a bottle of soda, but I knew it was a bottle of wine. So obviously I lifted it up enough. I don't know if I removed it completely and read the label of whatever it was, or if I just looked at it and said, yes, it's a clear liquid, whatever, so obviously it's a bottle of wine.

1/28/14RP 85.

Caselaw establishes that Officer Harris exceeded the scope of the authorized protective search by scrutinizing an object he did not believe to be a weapon. Garvin is analogous. There, while doing a protective search for weapons, the officer squeezed the defendant's pants pocket. Garvin, 166 Wn.2d at 246. Based on his first squeeze, the officer knew that he did not feel a weapon, but suspected what he felt might be narcotics. Garvin, 166 Wn.2d at 247, 249. Because the officer continued squeezing and the purpose of his squeezing was not to find weapons, but drugs, the search was unlawful. Garvin, 166 Wn.2d at 253. The "plain touch" exception was inapplicable because the contraband was not immediately recognizable. Garvin, 166 Wn.2d at 253.

Other cases are similar. For example, in Allen, the officer felt a “bulge” in the defendant’s jacket. Allen, 93 Wn.2d at 172. The officer removed the object causing the bulge, a wallet, and examined it. Our Supreme Court reasoned that while the discovery of the bulge entitled the officer to assure himself that it was not a weapon, once the officer was so satisfied, it was unlawful to further intrude upon the defendant’s affairs. Allen, 93 Wn.2d at 172. The Court recently reaffirmed this rule. Russell, 180 Wn.2d at 869-71 (unlawful to remove and open container, which no reasonable person could believe contained a weapon during protective frisk).

Officer Harris testified that the bulge in Ahmed’s pocket could have been a weapon. During his pat-down, however, Harris determined it was not a weapon. Rather, it was a cold beverage of sorts, bottled or canned. Instead of continuing his frisk for weapons, Harris removed the beverage to examine it in detail because he suspected it might be one of the reportedly stolen wine bottles. By taking this action, the officer exceeded the scope of the protective search. His pulling the bottle out is analogous to the officer in Garvin squeezing a bag in a pocket despite already determining it was not a weapon.

In rejecting Ahmed's motion to suppress, the trial court reasoned the officer was entitled to examine the object further because a small bottle of wine is arguably a weapon:

No one has mentioned this, including the officers, but I don't know that the bottles were glass, but a bottle of wine is a weapon as well arguably, and so they had the right to certainly figure out whether - - again, I'm not saying that it was being used as a weapon, that Mr. Ahmed intended any harm, but the point is a heavy object, particularly a glass object, certainly could be used to hit somebody, to hurt somebody, so I don't find there was anything improper about a frisk under the circumstances.

1/29/14RP 83. Officer Harris, however, did not testify that he thought that canned or bottled beverages were weapons or potentially dangerous. He also did not testify that the object was glass or heavy. He removed the beverage not to determine if it was a weapon or because he thought it was dangerous, but because it might have been incriminating evidence. Moreover, there was no danger of Ahmed grabbing the bottle and trying to use it against multiple armed police officers because his hands were cuffed behind his back. See State v. Xiong, 164 Wn.2d 506, 513-14, 191 P.3d 1278 (2008) (where defendant was handcuffed and cooperative, police did not have reasonable grounds to frisk defendant). The State failed to meet its burden to show compliance with Terry by clear and convincing evidence. Accordingly, the court erred in denying Ahmed's motion to suppress.

**c. The fruits of the unlawful search must be suppressed.**

The fruits of an unlawful search, derivative evidence, should be suppressed under the exclusionary rule. Dickerson, 508 U.S. at 373; Garvin, 166 Wn.2d 254. This includes statements made to the police that were a result of the illegal search. State v. Wallin, 125 Wn. App. 648, 655, 663, 105 P.3d 1037 (2005) (suppressing statements because they were a fruit of an illegal search). Agreeing to speak to the police does not cure the taint from the illegal search. Brown v. Illinois, 422 U.S. 590, 602, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975). Identifications that are made immediately after an unlawful arrest are also tainted derivative evidence. State v. Le, 103 Wn. App. 354, 362-65, 12 P.3d 653 (2000) (officer's post-arrest identification was fruit of an illegal search).

Ahmed's arrest was based on the discovery of the wine bottles on his person. The court found there was probable cause to arrest Ahmed once the bottles were found. 1/29/14RP 84-85. Consistent with the testimony from officers Harris and Leenstra, the court found that arrest was premised on the discovery of the wine. 1/28/14RP 84, 149; 1/29/14RP 85-86. Police questioned Ahmed based on the wine. Ahmed told police he was not in the 7-Eleven and that he bought the wine for \$20. 1/28/14RP 27. Further, based on the arrest, one of the store clerk's was

brought to the scene and identified Ahmed. Hence, the fruits of the illegal search was the wine on Ahmed's person, Ahmed's post-arrest statements to the police, and the clerk's post-arrest identification of Ahmed.

**2. The defendant's statements to the police were admitted in violation of Miranda and should have been suppressed.**

**a. Absent a waiver, statements obtained during custodial interrogation are inadmissible.**

Under the Fifth Amendment to the United States Constitution, no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Washington Constitution also protects the privilege against self-incrimination. Const. art. 1, § 9. To secure the privilege against self-incrimination, the United States Supreme Court in Miranda required that police warn suspects of their rights before subjecting them to custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The warning must inform suspects of their right to silence and presence of an attorney during questioning. Miranda, 384 U.S. at 444.

A person may waive their rights and speak with police, but the waiver must be made voluntarily, knowingly, and intelligently. Miranda, 384 U.S. at 444. The State bears the "heavy burden" of proving a waiver by the preponderance of the evidence. Miranda, 384 U.S. at 475; Berghuis v. Thompkins, 560 U.S. 370, 384, 130 S. Ct. 2250, 176 L. Ed. 2d 1098

(2010). The waiver may be implicit rather than explicit. North Carolina v. Butler, 441 U.S. 369, 374, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979).

Whether there is a waiver turns on the particular facts and circumstances of the case, which includes the background, experience, and conduct of the defendant. Butler, 441 U.S. at 374-75. Evidence of intoxication is a factor. State v. Reuben, 62 Wn. App. 620, 625, 814 P.2d 1177 (1991).

**b. The court erred in determining that the defendant waived his Miranda rights.**

It was uncontested that Ahmed was subjected to custodial interrogation. The issue was waiver. The State argued that Ahmed had impliedly waived his rights by answering police questions. 1/29/14RP 118, 122.

The event is captured on police video with audio. Ex. 25 (pretrial Ex. 2). The video shows Ahmed, who is very intoxicated, handcuffed and surrounded by police. Ex. 25. After Officer Harris removes a bottle of wine from Ahmed's pocket, the officers announce they were arresting Ahmed for robbery and Officer Leenstra then quickly reads Ahmed his Miranda rights. Ex 25. While Leenstra is reading, Ahmed denies that he committed a crime. Ex. 25. Leenstra asks if Ahmed understands his rights. Ex. 25. Ahmed responds by asking if someone who looks like him committed a crime. Ex. 25. Rather than make sure Ahmed understood his

rights or try to obtain a clear waiver, Leenstra immediately says “tell me about the wine in your pocket.” Ex. 25. The officers then question Ahmed about where the wine came from, did Ahmed go to 7-Elven, where was Ahmed’s knife, and accused Ahmed of threatening a clerk with a knife. Ex. 25. Ahmed said he paid \$20 for four bottles wine, and denied knowledge of the knife and the clerk. Ex. 25.

That an accused makes an uncoerced statement following a Miranda warning is insufficient by itself to prove waiver. Berghuis, 560 U.S. at 384. The government must additionally show that the accused understood his or her rights. Berghuis, 560 U.S. at 384. Here, while finding waiver, the court did not find that Ahmed understood his rights:

The Court is going to find that he received his rights, that although he didn’t expressly waive his rights, that he does voluntarily waive his rights by answering the questions the officers then throw out.

1/29/14 RP 129. Because the court did not find that Ahmed understood his rights and the evidence did not prove that he did, the court erred in implying a waiver.

The evidence did not show that Ahmed understood his rights. Officer Leenstra quickly read Ahmed Miranda and briefly asked whether Ahmed understood his rights. Ex. 25. The officers did not secure acknowledgement from Ahmed, who was heavily intoxicated. 1/28/14RP

18, 94, 165; Ex. 25. Immediately following his question whether Ahmed understood his rights, the officers began a barrage of questioning. Ex. 25. Ahmed responded to the questioning, but never stated he understood his rights. Ex. 25. Ahmed testified that he was impaired and did not recall the Miranda reading. 1/28/14RP 165.

These facts stand in stark contrast to the ones in Berghuis. There, the defendant was not intoxicated. The defendant was also given time to read the warnings. Berghuis, 560 U.S. at 386. Thus, when the defendant in Berghuis answered questions, he did so with the understanding of his rights. See also State v. Gardner, 28 Wn. App. 721, 723-24, 626 P.2d 56 (1981) (valid waiver where intoxicated defendant spoke clearly, read, and initialed the police department rights form); State v. Gross, 23 Wn. App. 319, 321, 324, 597 P.2d 894 (1979) (waiver valid where defendant said he understood his rights).

Because the evidence did not establish a waiver, the court erred in admitting Ahmed's post-arrest statements.

### **3. The inadmissible evidence was prejudicial.**

If evidence was obtained without authority of law, the evidence is not admissible in court. State v. Day, 161 Wn.2d 889, 894, 168 P.3d 1265 (2007). Its admission is constitutional error. State v. Thompson, 151 Wn.2d 793, 808, 92 P.3d 228 (2004). Admission of statements in

violation of Miranda is also constitutional error. State v. Nysta, 168 Wn. App. 30, 43, 275 P.3d 1162 (2012). Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless. State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. Guloy, 104 Wn.2d at 425.

Evidence that wine was found on Ahmed, his post-arrest statements to the police, and the clerk's post-arrest identification were admitted at trial during the State's case. 2/3/14RP 26, 60-61; 2/4/14RP 29, 59, 79, 38, 89, 202-04. This evidence was used to establish that Ahmed took the wine with intent of depriving the owners of it. While Ahmed testified to taking the wine (with the plan of returning to pay for it), he might have chosen not to testify if the court had not erroneously denied his motion to suppress.

Regardless, Ahmed's statements to police were used to prove that Ahmed intended to permanently deprive the store of the wine. This was Ahmed's primary defense. Ahmed's statement to police that he had paid \$20 for the wine was inconsistent with a claim that he planned to return to the store and pay. 2/5/14RP 45. During closing, the State argued that Ahmed's ability to answer questions from the police showed intent.

2/6/14RP 42. The State cannot meet its burden to prove the errors harmless beyond a reasonable doubt. This Court should reverse.

**4. The court failed to enter findings of fact and conclusions of law.**

After conducting a CrR 3.6 or CrR 3.5 hearing, the court must enter written findings of fact and conclusions of law. CrR 3.6(b); CrR 3.5(c). This ensures that there is an adequate record for the review. See State v. Head, 136 Wn.2d 619, 622–23, 964 P.2d 1187 (1998).

The court failed to enter written findings and conclusions. Unless the court is satisfied with the record, the remedy is remand for entry of the findings and conclusions. See Head, 136 Wn.2d 624-25.

If this Court is satisfied that the court's oral opinions provide sufficient information to enable review, this Court may review the issues without remanding. State v. Radka, 120 Wn. App. 43, 48, 83 P.3d 1038 (2004). This Court should reverse because the record establishes that the police exceeded the scope of the frisk for weapons and that Ahmed did not waive Miranda. If this Court remands, Ahmed reserves the right to challenge the court's findings and argue that the late entry of the findings is prejudicial. See Head, 136 Wn.2d at 624-25.

**F. CONCLUSION**

Because the police exceeded the scope of a lawful protective frisk, the trial court erred in denying Ahmed's motion to suppress. This Court should reverse the conviction and remand for a new trial.

DATED this 7th day of November, 2014.

Respectfully submitted,



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

STATE OF WASHINGTON, )  
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 Respondent, )  
 )  
 v. )  
 )  
 MOHAMED AHMED, )  
 )  
 Appellant. )

NO. 71608-5-I

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7<sup>TH</sup> DAY OF NOVEMBER, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] MOHAMED AHMED 377030 WASHINGTON CORRECTIONS CENTER PO BOX 900 SHELTON, WA 98584	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2014.

X \_\_\_\_\_ 

**Washington Appellate Project**  
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