

73711-2

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Nov 23, 2015  
Court of Appeals  
Division I  
State of Washington

NO. 73711-2-I

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

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STATE OF WASHINGTON,

Respondent,

v.

AARON THOMAS,

Appellant.

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

The Honorable George Appel, Judge

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BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issue Pertaining to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. <u>Procedural facts</u> .....	2
2. <u>CrR 3.6 suppression hearing, findings, and conclusions</u> .....	2
C. <u>ARGUMENT</u> .....	8
THE COURT VIOLATED THE APPELLANT’S STATE AND FEDERAL CONSTITUTIONAL RIGHTS WHEN IT DENIED HIS MOTION TO SUPPRESS THE EVIDENCE. ....	8
1. <u>Introduction to applical law</u> .....	8
2. <u>Innocuous details, such as being in the company of a woman     and wearing a motorcycle jacket, do not provide reasonable     suspicion to suppor a <i>Terry</i> stop.</u> .....	10
3. <u>Reasonable suspicion for a <i>Terry</i> stop is an individualized     determination and cannot be predicated solely on the     behavior of third parties.</u> .....	14
D. <u>CONCLUSION</u> .....	18

## TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. Armenta</u> 134 Wn.2d 1, 948 P.2d 1280 (1997).....	12, 13, 14
<u>State v. Buelna Valdez</u> 167 Wn.2d 761, 224 P.3d 751 (2009).....	8
<u>State v. Doughty</u> 170 Wn.2d 57, 239 P.3d 573 (2010).....	9, 10, 11, 15, 17
<u>State v. Fuentes</u> 183 Wn.2d 149, 352 P.3d 152 (2015).....	9, 10, 17
<u>State v. Gatewood</u> 162 Wn.2d 534, 182 P.3d 426 (2008).....	10
<u>State v. Hill</u> 123 Wn.2d 641, 870 P.2d 313 (1994).....	10
<u>State v. Jones</u> 146 Wn.2d 328, 45 P.3d 1062 (2002).....	10
<u>State v. Kennedy</u> 107 Wn.2d 1, 726 P.2d 445 (1986).....	9
<u>State v. Ladson</u> 138 Wn.2d 343, 979 P.2d 833 (1999).....	10
<u>State v. Levy</u> 156 Wn.2d 709, 132 P.2d 1076 (2006).....	10
<u>State v. Martinez</u> 135 Wn. App. 174, 143 P.3d 855 (2006).....	14
<u>State v. Patton</u> 167 Wn.2d 379, 219 P.3d 651 (2009).....	8

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Samsel</u> 39 Wn. App. 564, 694 P.2d 670 (1985).....	14

<u>State v. Tijerina</u> 61 Wn. App. 626, 811 P.2d 241 <u>review denied</u> , 118 Wn.2d 1007 (1991) .....	11, 13
---	--------

**FEDERAL CASES**

<u>Brown v. Texas</u> 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979).....	16, 17
--	--------

<u>Dunaway v. New York</u> 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979).....	16
--	----

<u>Katz v. United States</u> 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).....	8
---	---

<u>Terry v. Ohio</u> 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).....	7, 9, 10, 14, 15, 16
--	----------------------

<u>Ybarra v. Illinois</u> 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979).....	15, 17
--	--------

**RULES, STATUTES AND OTHER AUTHORITIES**

CrR 3.6.....	1, 2, 10
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U.S. Const. Amend. IV .....	7, 8
-----------------------------	------

Const. art. I § 7.....	7, 8
------------------------	------

A. ASSIGNMENTS OF ERROR

1. The court erred in denying the appellant's CrR 3.6 motion to suppress the evidence based on an illegal investigative detention.

2. The denial of the suppression motion violated the appellant's state and federal constitutional rights to be free from illegal searches and seizures.

3. The court erred in entering conclusions of law<sup>1</sup> 2.1, 2.2, 2.3, and 2.6.<sup>2</sup>

Issue Pertaining to Assignments of Error

The appellant was charged with possession of a controlled substance. He was initially detained on suspicion he was associated with a stolen van. The controlled substance, methamphetamine, was discovered during a search incident to arrest on warrants unrelated to the investigation.

Where police officers lacked a reasonable basis to suspect the appellant was connected with the stolen van, did the court err in denying the appellant's motion to suppress the evidence?

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<sup>1</sup> CP 91-94. The findings and conclusions are attached to as an appendix.

<sup>2</sup> For clarity, Thomas does not assign error to conclusions 2.4 and 2.5, which address the "length" and "scope" of the detention, because he does not separately challenge the steps taken once officers detained him. Thomas's argument is, rather, that the initial basis for the detention was invalid.

B. STATEMENT OF THE CASE

1. Procedural facts

The State charged Aaron Thomas with possession of methamphetamine, alleged to have occurred on March 3, 2015. CP 113-14. Following a CrR 3.6 hearing, the court denied his motion to suppress evidence. RP 83-90; CP 91-94. Thomas was convicted as charged following a bench trial on stipulated facts. RP 99-106; see CP 15-62 (stipulated evidence, including police and lab reports). The court sentenced Thomas within the standard range. CP 82-83. He timely appeals the denial of his suppression motion. CP 1-2.

2. CrR 3.6 suppression hearing, findings, and conclusions

Thomas moved to suppress methamphetamine found during a search incident to arrest. He argued the police lacked reasonable suspicion to detain him and demand his identification, which led to the discovery of warrants. RP 67-77; CP 101-07. Two arresting officers, as well as Thomas, testified at the suppression hearing.

A winter evening in early 2015, police officer Chris Bennett was patrolling the 2200 block of Hoyt Avenue in Everett. RP 8. Bennett made a habit of working that block because the building at 2212 Hoyt, a house divided into upper and lower floor apartments, was known for activity that tended to draw police involvement. RP 9-10, 13. Such activity included

gunshots, arrests, reports of stolen vehicles and other stolen property, drug dealing, and heavy foot traffic. RP 9-10; see also RP 48-49 (Officer Paul Stewart's testimony about activities associated with that address).

Bennett saw a white GMC van he did not recognize parked in front of the duplex. RP 12. The engine was not warm and Bennett could not estimate when the van had last been driven. RP 36. However, after contacting dispatch, Bennett discovered the van had been reported stolen. RP 11. Dispatch contacted the registered owner and reported to Bennett that the owner was en route to pick up the van. RP 11.

Bennett performed a cursory examination the van's interior, focusing on damage to the ignition to determine if the van was drivable. RP 15. According to Bennett, the van was so full of items it appeared as if a storage locker had been emptied into the van. RP 16-17. But the two front seats were cleared of items, leading Bennett to believe two people were associated with the van. RP 16.

Among other items, Bennett noticed motorcycle helmets, padded riding gloves,<sup>3</sup> as well as two backpacks placed near the front of the van. RP 17, 19. One backpack contained men's clothing and the other contained women's clothing. RP 17. Bennett therefore suspected a man

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<sup>3</sup> Bennett was himself a motorcycle aficionado and owned similar gear. RP 19.

and a woman were associated with the stolen van. RP 22. He also located a file folder containing court paperwork under the name of "Shyla Gypin." RP 17.

Bennett checked that name and learned that Gypin had been charged with crimes in and around Snohomish County. RP 18. Meanwhile, the registered owner arrived, and he disclaimed ownership of most items in the van, identifying only some hiking and fishing gear as his. RP 18.

After additional officers arrived, Bennett decided to inquire at 2212 Hoyt if anyone knew about the van. RP 20. As Officers Bennett and Stewart approached the duplex, a man and a woman came out of the door leading to the upper unit. RP 22. The man, whom Bennett later learned was Thomas, was wearing a belted nylon motorcycle jacket. RP 23. Bennett did not see any motorcycles on the street. RP 23. Bennett, who had experience with motorcycles and motorcycle gear, observed that the jacket was made of reinforced fabric and constructed to withstand falls. RP 24. Bennett asked Thomas and the woman what they doing, and they answered that they were going for a walk. RP 26. Thomas also asked if he could go back inside the duplex. RP 35. Bennett said no. RP 35. Bennett asked the woman for her name, and she responded, "Shyla." RP 26.

Bennett decided to separate the two. The woman went with Officer Stewart while Bennett spoke with Thomas. RP 27. Bennett asked Thomas for identification, and Thomas provided an Idaho identification card. RP 27. Bennett had dispatch check for warrants. RP 28.

Officer Bennett acknowledged Thomas was not free to leave from the moment that Bennett saw him. RP 40. Bennett suspected Thomas of involvement in the theft of the van because he was wearing a motorcycle jacket that appeared to match the motorcycle gear in the van. RP 27, 40. Moreover, Thomas and the woman appeared to be together. RP 40. Finally, the home that Thomas emerged from was associated with criminal activity. RP 40.

Dispatch reported Thomas had two warrants for his arrest, including an Idaho warrant. RP 28, 52-53. Thomas asked dispatch to "confirm" the warrants while he spoke with Thomas for a few minutes. RP 28-30. Once dispatch confirmed the warrants, Bennett arrested Thomas. RP 31.

Bennett walked Thomas to where Stewart was speaking with the woman. RP 31. While Bennett spoke with the woman, Bennett had Stewart search Thomas incident to arrest. RP 31. Stewart located suspected methamphetamine in Thomas's jacket pocket. RP 54-56. Stewart also found hypodermic needles in Thomas's other pocket. RP 56.

Thomas testified at the suppression hearing. RP 62. He did not feel free to leave from the moment he walked out the door. For example, as Thomas tried to walk past the officers, one of the officers said, "Hold on a second." RP 64-65. The officer asked Thomas what he wanted the officers to do with the items in the van, because the registered owner was coming. RP 65. Thomas denied the items were his, but the officer then asked for identification. RP 66.

The court denied the motion to suppress. CP 91-94. According to the court's written findings, Officer Bennett observed Thomas emerge from the residence in what Bennett considered to be a motorcycle jacket based on "material, padding, and other features." Finding 1.14. Officer Bennett did not see any motorcycles on the street. Finding 1.15.

The court also found that

[p]olice believed that Gypin and Thomas were associated with the stolen . . . van for the following reasons: the . . . van was parked directly in front of 2212 Hoyt Avenue, where Thomas and Gypin emerged from; the residence . . . had previously been associated with stolen vehicles or other criminal activity; the . . . van only had room for two people because the van was filled with property except for the driver and front passenger seat; there was motorcycle gear and clothing inside the . . . van for a male and female, and Thomas and Gypin were a male and female . . . ; Thomas was wearing a motorcycle jacket; and the court paperwork inside the . . . van had the name Shyla Gypin.

CP 92-93 (Finding 1.16).<sup>4</sup>

From these findings, the court concluded

2.1 Officer Bennett and Officer Stewart had specific and articulable facts pursuant to *Terry*,<sup>5</sup> which taken with reasonable inferences, justified the[] detention of Thomas [to investigate] whether he was associated with the stolen . . . van.

2.2 [The officers] had a sufficient basis to detain Thomas by asking for his identification after observing Thomas [leave] 2212 Hoyt Avenue wearing a motorcycle jacket and [with] a female, even [before] learning . . . the female's name was "Shyla."

2.3 [The officers] did not violate either the Fourth Amendment . . . or Article I Section 7 . . . when they detained Thomas.

.....

2.6 Based upon officers having specific and articulable facts justifying the detention and the detention being justified in both length and scope, there is no reason to apply the exclusionary rule.

CP 93-94.

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<sup>4</sup> Thomas does not assign error to this finding of fact because, while it states *what* police believed about Thomas, it expresses no finding as to whether the belief was reasonable.

<sup>5</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

C. ARGUMENT

THE COURT VIOLATED THE APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS WHEN IT DENIED HIS MOTION TO SUPPRESS THE EVIDENCE.

Bennett seized Thomas immediately after he emerged from a residence on a hunch that Thomas was connected with a stolen van. Because the totality of circumstances known to Bennett at the time he seized Thomas do not demonstrate a substantial possibility that Thomas was associated with the van, the seizure was unconstitutional from the start. Because the State's evidence against Thomas flowed from this unlawful detention, this Court should suppress the evidence, reverse Bennett's conviction, and order the case dismissed.

1. Introduction to applicable law

Under the Fourth Amendment and article I, section 7, a warrantless seizure is per se unreasonable unless it falls within one of the narrow, carefully delineated, and jealously guarded exceptions to the warrant requirement. Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); State v. Buelna Valdez, 167 Wn.2d 761, 777, 224 P.3d 751 (2009). "These exceptions are limited by the reasons that brought them into existence; they are not devices to undermine the warrant requirement." State v. Patton, 167 Wn.2d 379, 386, 219 P.3d 651 (2009).

The United States Supreme Court announced one such exception in Terry v. Ohio, 392 U.S. 1, 20-22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). To initiate a Terry stop, officers must have “a well-founded suspicion that the defendant is engaged in criminal conduct.” State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). “[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Id. (quoting Terry, 392 U.S. at 21). Thus, there must be “a substantial possibility that criminal conduct has occurred or is about to occur.” State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

On review, “a court must evaluate the totality of circumstances presented to the investigating officer.” Doughty, 170 Wn.2d at 62. These circumstances are judged against an objective standard. Terry, 392 U.S. at 21-22. While this Court evaluates the totality of the circumstances to determine whether a reasonable suspicion of criminal activity exists, it must do by carefully evaluating whether each fact identified by the officer indeed contributes to the suspicion. State v. Fuentes, 183 Wn.2d 149, 159, 352 P.3d 152, 156 (2015).

An officer’s actions also “must be justified at their inception,” meaning that circumstances arising after the seizure begins cannot inform

the analysis of the initial seizure. State v. Gatewood, 162 Wn.2d 534, 539, 182 P.3d 426 (2008); accord, Terry, 392 U.S. at 21-22 (requiring analysis of “facts available to the officer at the moment of the seizure”).

The State carries the “heavy burden” of proving the justification for a warrantless search or seizure, State v. Jones, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002); State v. Ladson, 138 Wn.2d 343, 350, 979 P.2d 833 (1999), and must carry this burden by clear, cogent, and convincing evidence, Doughty, 170 Wn.2d at 62. Where officers lack a reasonable suspicion to detain an individual, evidence flowing from the initial detention must be suppressed. Fuentes, 183 Wn.2d at 158 (citing Doughty, 170 Wn.2d at 62).

This Court reviews challenged CrR 3.6 findings for substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair minded, rational person of the truth of the finding. Id. A trial court’s conclusions of law are reviewed de novo. State v. Levy, 156 Wn.2d 709, 733, 132 P.2d 1076 (2006).

2. Innocuous details, such as being in the company of a woman and wearing a motorcycle jacket, do not provide reasonable suspicion to support a *Terry* stop.

Here, the court first noted that Bennett’s suspicion was reasonable because Thomas was wearing a motorcycle jacket and seen with a woman.

Finding 1.16; Conclusions 2.1 and 2.2. However, both of these facts were innocuous and not indicative of criminal activity. Neither fact enhances the “totality of the circumstances” to support the detention.

A hunch alone does not warrant police intrusion into people's everyday lives. Doughty, 170 Wn.2d at 63. Nor do innocuous facts. State v. Tijerina, 61 Wn. App. 626, 629, 811 P.2d 241, review denied, 118 Wn.2d 1007 (1991).

Tijerina is instructive. There, a state trooper stopped Tijerina's car after it crossed the fog line on Interstate 90 near Spokane. When Tijerina, who was Hispanic, opened his glove box to retrieve his registration, the trooper noticed “several small bars of soap, the kind commonly given out at motels.” Id. at 628. The trooper later testified he was aware of “dozens of investigations monthly in the motels [in the Spokane area] regarding Hispanics selling controlled substance[s].” Id. Because Tijerina's license and registration were current, the trooper decided not to issue a citation. Nevertheless, due to the bars of soap and the officer's knowledge of drug trafficking in Spokane area motels, he asked if he could search the vehicle. Tijerina consented. The search produced several bags of cocaine. Tijerina was arrested and later convicted of possessing a controlled substance. At trial, the court denied Tijerina's motion to suppress the cocaine. Id.

The Court of Appeals reversed Tijerina's conviction, concluding that once the trooper decided not to issue a citation, further detention "had to be based on articulable facts from which the [trooper] could reasonably suspect criminal activity." Id. at 629. Although the court did not question the trooper's contention that some Hispanic people engaged in drug trafficking in Spokane area motels, it reasoned that the defendant's ethnicity and possession of bars of soap were innocuous facts insufficient to justify further investigation. Id.

Similarly, in State v. Armenta, two men, Cruz and Armenta, approached an officer and requested assistance with their vehicle. 134 Wn.2d 1, 4, 948 P.2d 1280 (1997). During the conversation, the officer requested identification and asked Cruz about a bulge in one of his pockets. In response, Cruz produced \$1,000 in cash. When the officer asked where Cruz got the money, he said that he had just cashed a paycheck for work he did on a Seattle ranch, but could not name the ranch. Id. at 5. Armenta then produced additional cash and said that he got the money as payment for a car he had just sold. Armenta did not have a bill of sale or receipt from this alleged transaction. Id. at 5-6.

The officer then called in a driver's license check on the names Armenta and Cruz had provided and discovered that Armenta's Arizona license had been suspended. The officer called for backup and placed the

money in his patrol car. He then asked Armenta if he could search his car and informed him that he did not have to consent. Armenta said he did not mind, and the officer searched the car, discovering drugs in the trunk. Id. at 6.

The Supreme Court found that Armenta and Cruz had been seized at the moment the money was placed in the patrol car and that the seizure was illegal because, while they might have fit the officer's perception of drug dealers, they were not doing anything illegal or inherently suspicious when they were seized. Id. at 13. While the Court acknowledged the officer had reason to suspect that Cruz and Armenta were about to engage in the criminal activity of driving without a valid license, detaining Armenta and Cruz or searching the vehicle were not likely to produce evidence of that offense. Id. at 15-16. Finding that the police lacked a "specific and articulable facts" that could have reasonably led the officer to suspect that Armenta and Cruz were engaged, or about to engage, in criminal activity at the time of the seizure, the Supreme Court reversed the Court of Appeals and reinstated the trial court order dismissing their convictions. Id. at 17-18.

This case is like Tijerina and Armenta because mere innocuous facts led to Bennett's seizure of Thomas the moment he emerged from the residence. The State may argue that a police officer may rely on his

experience to evaluate apparently innocuous facts. State v. Martinez, 135 Wn. App. 174, 180, 143 P.3d 855 (2006) (citing State v. Samsel, 39 Wn. App. 564, 570-71, 694 P.2d 670 (1985)). Facts “which appear innocuous to the average person may appear incriminating to a police officer in light of past experience.” Samsel, 39 Wn. App. at 570. But nothing about wearing a motorcycle jacket in the winter<sup>6</sup> or spending time in the company of a woman renders either activity more suspicious to a police officer. Even considering the gimlet eye of the trained officer, the facts remain innocuous. These facts do not support the detention.

3. Reasonable suspicion for a Terry stop is an individualized determination and cannot be predicated solely on the behavior of third parties.

The superior court also relied on Thomas’s presence at 2212 Hoyt Avenue, which was associated with a variety of criminal activities, to conclude that Bennett possessed a well-founded suspicion Thomas was

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<sup>6</sup> Bennett’s testimony indicates that the motorcycle jacket “matched” the gloves and helmet in the car. RP 40. It is unclear whether this terminology was intended to suggest the items were (1) part of a matched set or (2) that all items were suitable for use on a motorcycle. The superior court made no related finding that the jacket “matched” the other items. Because the State had the burden at the suppression hearing, this Court should adopt the second interpretation. Armenta, 134 Wn.2d at 14 (“In the absence of a finding on a factual issue [reviewing court] must indulge the presumption that the party with the burden of proof failed sustain their burden on this issue.”).

engaged in criminal activity. Finding 1.16; Conclusions 2.1 and 2.2. The court's determination is incorrect as a matter of law.

Mere proximity to a location associated with criminal activity is insufficient to support a reasonable suspicion that the detained person is engaged in criminal activity. The state Supreme Court's opinion in Doughty controls. Doughty approached a suspected drug house late at night, stayed for two minutes, and then drove away. 170 Wn.2d at 60. Although officers did not see what Doughty may have done in the house, they stopped Doughty for suspicion of drug activity. Id.

The Supreme Court held the Terry stop was unlawful: "A person's presence in a high-crime area at a 'late hour' does not, by itself, give rise to a reasonable suspicion to detain that person." Id. at 62. More importantly, "a person's 'mere proximity to others independently suspected of criminal activity does not justify the stop.'" Id. (quoting State v. Thompson, 93 Wn.2d 838, 841, 613 P.2d 525 (1980)). Doughty requires Terry stops to be based on individualized suspicion, not some general aura of suspiciousness radiating from a compromised location.

Doughty comports with United States Supreme Court precedent. In Ybarra v. Illinois, 444 U.S. 85, 87 & n.1, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979), the Court construed an Illinois statute permitting police to detain and search any person found on a premises when executing a search

warrant. Officers obtained a warrant because they suspected a bartender of dealing heroin from a bar. Id. at 88. When executing the warrant, officers detained and searched Ybarra, a patron, and found heroin. Id. at 88-89. The Court held the detention unlawful: “Although the search warrant . . . gave officers authority to search the premises and to search [the bartender], it gave them no authority whatever to invade the constitutional protections possessed individually by the tavern’s customers.” Id. at 91-92. In analyzing the detention under Terry, the Court confirmed that the “‘narrow scope’ of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion *directed at the person to be frisked.*” Id. (emphasis added) (quoting Dunaway v. New York, 442 U.S. 200, 210, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979)).

Similarly, in Brown v. Texas, 443 U.S. 47, 48-49, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979), the Court considered the propriety of officers’ stop of Brown, who was merely walking in an alley with a “high incidence of drug traffic.” Brown refused to identify himself and was arrested. Id. at 49. The Court held that the initial detention was unlawful, noting “an individual’s reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field.” Id. at 51. “[S]eizure[s] must be based on specific, objective facts indicating that

society's legitimate interests require the seizure of the particular individual . . . .” Id.

Under Brown, Ybarra, and Doughty, Thomas's presence at 2212 Hoyt Avenue, for an undisclosed amount of time and for an unknown reason, was insufficient to raise a reasonable suspicion that Thomas was associated with criminal activity. Police officers had no idea how long he had been there, or what his business was, and thus had no reason to suspect that he was associated with any of the various crimes police associated with the house. See, e.g., Doughty, 170 Wn.2d at 60 (finding seizure illegal where police did not know what Doughty was doing at suspected drug house); State v. Gleason, 70 Wn. App. 13, 18, 851 P.2d 731 (1993) (where Gleason was seized leaving apartment complex with history of drug sales, finding seizure unwarranted where it was the first time Gleason was seen in the area, officers did not know what occurred at the apartments, and there was no evidence Gleason acted suspiciously).

In summary, the court erred in concluding that police officers had a well-founded suspicion that Thomas was engaged in criminal conduct at the time he was seized. The officers' later search of Thomas, incident to arrest, flowed from the illegal seizure. The evidence, therefore, must be suppressed. Fuentes, 183 Wn.2d at 158.

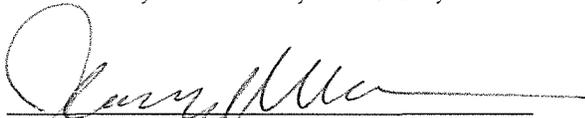
D. CONCLUSION

The superior court violated Thomas's constitutional rights by denying his motion to suppress the evidence. This Court should order the evidence suppressed and, because it is the only evidence supporting the charge, order that the charge be dismissed.

DATED this 23<sup>rd</sup> day of November, 2015.

Respectfully submitted,

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# APPENDIX

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

The State of Washington,  
  
Plaintiff,  
  
vs.  
  
AARON MICHAEL THOMAS,  
  
Defendant.

No. 15-1-00621-0

CERTIFICATE PURSUANT TO CrR 3.6  
OF THE CRIMINAL RULES FOR  
SUPERIOR COURT AND ORDER  
DENYING DEFENSE'S MOTION

On June 25, 2015, a hearing was held before the Honorable George F.B. Appel of the above court on the Defense's Motion to Suppress and Dismiss. The court considered the testimony of the witness at the hearing and the arguments and memoranda of counsel. Being fully advised, the court now enters the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT.**

1.1 On March 3, 2015, Everett Police were investigating two stolen vehicles in the 2200 block of Hoyt Avenue in Everett, Snohomish County, Washington.

1.2 One stolen vehicle, a green Subaru, was found parked approximately ten cars to the south of the house located at 2212 Hoyt Avenue.

1.3 Another stolen vehicle, a white GMC van, was parked directly in front of the residence located at 2212 Hoyt Avenue.

1.4 Both the Subaru and the GMC van had previously been reported stolen.

1.5 Everett Police examined the GMC van and observed that the ignition had been severely damage as if someone had used a tool to start it.

**ORIGINAL**

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1           1.6    The GMC van was filled with property except for the front passenger seat  
2 and driver's seat; all of the other seats had property on them.

3           1.7    Officer Bennett recognized several items of property in the van as being  
4 motorcycle gear or equipment and clothing associated with a male and female.

5           1.8    Officer Bennett is familiar through both his personal and professional life  
6 with motorcycles and motorcycle equipment.

7           1.9    During the search of the GMC van, Officer Bennett found court paperwork  
8 belonging to Shyla Gypin.

9           1.10   Based on prior investigations, police knew on March 3, 2015, that the  
10 residence at 2212 Hoyt Avenue had been associated with stolen vehicles or other  
11 criminal activity.

12           1.11   Officer Bennett and Officer Stewart of the Everett Police Department  
13 approached the residence located at 2212 Hoyt Avenue to investigate the  
14 circumstances relating to the GMC van, which was parked directly in front of that  
15 residence.

16           1.12   The residence at 2212 Hoyt Avenue has two front doors, one for the lower  
17 unit and one for the upper unit, and two people, a male and female, emerged from the  
18 upper unit as officers approached.

19           1.13   When Officer Bennett asked the female her name, she stated that it was  
20 "Shyla", which is not a common name; she was later identified as Shyla Gypin ("Gypin").

21           1.14   Officer Bennett also observed that the male, later identified as the  
22 defendant, Aaron Michael Thomas ("Thomas"), was wearing what he believed was a  
23 motorcycle jacket due to material, padding, and other features; Officer Stewart also  
24 believed that the jacket worn by Thomas was a motorcycle jacket.

25           1.15   Officer Bennett did not observe any motorcycles parked on the street near  
26 their location.

          1.16    Police believed that Gypin and Thomas were associated with the stolen  
GMC van for the following reasons: the stolen GMC van was parked in directly in front

1 of 2212 Hoyt Avenue, where Thomas and Gypin emerged from; the residence at 2212  
2 had previously been associated with stolen vehicles or other criminal activity; the GMC  
3 van only had room for two people because the van was filled with property except for  
4 the driver and front passenger seat; there was motorcycle gear and clothing inside the  
5 GMC van for a male and female, and Thomas and Gypin were a male and female,  
6 respectively; Thomas was wearing a motorcycle jacket; and the court paperwork inside  
7 the GMC van had the name Shyla Gypin.

8 1.17 Officer Bennett asked Thomas for identification, and Thomas provided his  
9 Idaho identification card.

10 1.18 Officer Bennett learned from dispatch that Thomas had a warrant for his  
11 arrest, and Officer Bennett asked dispatch to confirm the warrant.

12 1.19 Officer Bennett spoke with Thomas while waiting for dispatch to confirm  
13 the warrants.

14 1.20 Dispatch confirmed the warrant for Thomas's arrest just a couple of  
15 minutes after Officer Bennett made the request to confirm it.

16 1.21 Officer Bennett placed Thomas under arrest due to the outstanding  
17 warrant.

18 1.22 During a search of Thomas incident to arrest, Officer Stewart found plastic  
19 baggies containing a substance that he believed, based on his training and experience,  
20 to be methamphetamine.

21 1.23 Since Officer Bennett did not testify as to any specific statements made by  
22 Thomas, it is unclear whether there is a dispute about whether Thomas asked to go  
23 back inside to use the restroom after saying that he was going for a walk, and Officer  
24 Bennett denied the request.

## 24 **II. CONCLUSIONS OF LAW.**

25 2.1 Officer Bennett and Officer Stewart had specific and articulable facts  
26 pursuant to *Terry*, which taken with reasonable inferences, justified their detention of

1 Thomas for the purpose of investigating whether he was associated with the stolen  
2 GMC van.

3 2.2 Officer Bennett and Officer Stewart had a sufficient basis to detain  
4 Thomas by asking for his identification after observing Thomas exit the residence at  
5 2212 Hoyt Avenue wearing a motorcycle jacket and in the company of a female, even  
6 prior to learning that the female's name was "Shyla."

7 2.3 Officer Bennett and Officer Stewart did not violate either the Fourth  
8 Amendment of the United States Constitution or Article I Section 7 of the Washington  
9 State Constitution when they detained Thomas.

10 2.4 Officer Bennett's investigation resulted in him learning that Thomas had  
11 an outstanding warrant, which justified him lengthening the time of the detention.

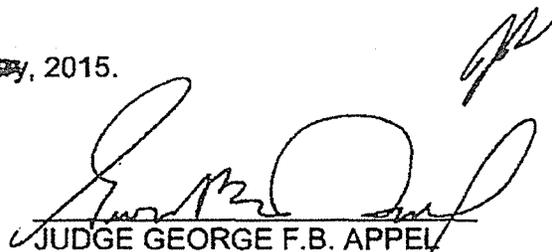
12 2.5 Officer Bennett's detention of Thomas was justified in length and scope.

13 2.6 Based upon officers having specific and articulable facts justifying the  
14 detention and the detention being justified in both length and scope, there is no reason  
15 to apply the exclusionary rule.

16 **ORDER**

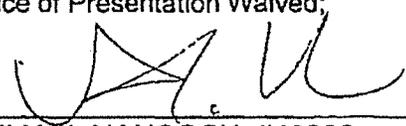
17 IT IS HEREBY ORDERED that the Defense's Motion to Suppress and Dismiss is  
18 denied.

19 DATED this 1<sup>st</sup> day of July, 2015.

20   
21 JUDGE GEORGE F.B. APPEL

22 Presented by:

23   
24  
25 JARETT A. GOODKIN, #25399  
26 Deputy Prosecuting Attorney

Approved for Entry: Notice of  
Notice of Presentation Waived;  
  
EMILY M. HANCOCK, #40290  
Attorney for Defendant

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 73711-2-1
	)	
AARON THOMAS,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 23<sup>rd</sup> DAY OF NOVEMBER 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X]     AARON THOMAS  
          DOC NO. 321897  
          AIRWAY HEIGHTS CORRECTIONS CENTER  
          P.O. BOX 900  
          AIRWAY HEIGHTS, WA 99001

**SIGNED** IN SEATTLE WASHINGTON, THIS 23<sup>rd</sup> DAY OF NOVEMBER 2015.

X *Patrick Mayovsky*