74217-5

FILED
May 18, 2016
Court of Appeals
Division I
State of Washington

No. 74217-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TRAVIS RIFE,

Appellant.

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

BRIEF OF APPELLANT

KATHLEEN A. SHEA
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT 1

B. ASSIGNMENTS OF ERROR 2

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 3

D. STATEMENT OF THE CASE..... 4

1. **The trial court erred when it denied Mr. Rife's motion to suppress the evidence seized in a warrantless search of his backpack**. 6

   a. Warrantless searches are per se unconstitutional. 6

   b. Under a narrowly drawn exception, an officer may perform a warrantless search incident to arrest (1) of the arrestee's person and (2) of the area within the arrestee's immediate control. 7

   c. Because Mr. Rife's backpack was not under his immediate and exclusive control, it did not constitute a part of his person. 9

   d. The trial court's finding that the search of Mr. Rife's backpack was justified because it was within his immediate control and access is unsupported by the evidence. 12

2. **The trial court erred in admitting Mr. Rife's statements in response to police questioning conducted prior to *Miranda* warnings**..... 13

   a. Law enforcement must provide a *Miranda* warning to a suspect prior to conducting a custodial interrogation..... 13

   b. The officer interrogated Mr. Rife while he was in custody..... 15

   c. The State failed to demonstrate the public safety exception to *Miranda* was satisfied..... 16

d. Suppression of all of Mr. Rife's statements was required... 17

F. CONCLUSION 19

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Brock, 184 Wn.2d 148, 355 P.3d 1118 (2015) 7, 8, 10, 11, 13

State v. Byrd, 178 Wn.2d 611, 310 P.3d 793 (2013) 8, 9, 10, 11, 13

State v. Daniels, 160 Wn.2d 256, 156 P.3d 905 (2007) 14

State v. Duncan, ___Wn.2d___, 2016 WL 1696698 (No. 90188-1, April 28, 2016).....7

State v. Heritage, 152 Wn.2d 210, 95 P.3d 345 (2004).....14

State v. Houser, 95 Wn.2d 143, 622 P.2d 1218 (1980) 6, 11

State v. Jones, 146 Wn.2d 328, 45 P.3d 1062 (2002).....7

State v. MacDicken, 179 Wn.2d 936, 319 P.3d 31 (2014) 7, 10, 11

State v. Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004) 6

State v. Sargent, 111 Wn.2d 641, 762 P.2d 1127 (1988) 14

State v. Valez, 167 Wn.2d 761, 224 P.3d 751 (2009).....7

State v. Williams, 102 Wn.2d 733, 689 P.2d 1065 (1984).....6

Washington Court of Appeals

State v. Byrd, 162 Wn. App. 612, 258 P.3d 686.....10

State v. Lozano, 76 Wn. App. 116, 882 P.2d 1191 (1994) 14

State v. Miller, 165 Wn. App. 385, 267 P.3d 524 (2011).....14, 15

State v. Richmond, 65 Wn. App. 541, 828 P.2d 1180 (1992).....14

State v. Rosas-Miranda, 176 Wn. App. 773, 309 P.3d 728 (2013).....14

State v. Spotted Elk, 109 Wn. App. 253, 34 P.3d 906 (2001).....16, 17

State v. VanNess, 186 Wn. App. 148, 344 P.3d 713 (2015) 7

State v. Wisdom, 187 Wn. App. 652, 349 P.3d 953 (2014) 11, 12

United States Supreme Court

California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991) 11

Chimel v. California, 396 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969) 7

Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) 6

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966) 14

United States v. Rabinowitz, 339 U.S. 56, 70 S.Ct. 430, 94 L.Ed. 653 (1950) 9

United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973) 8

A. SUMMARY OF ARGUMENT

Travis Rife was sitting in his wheelchair on the side of the street early one morning, with his backpack hung over the back of his wheelchair. A police officer saw him, determined he had outstanding misdemeanor warrants, and placed him under arrest. After handcuffing Mr. Rife, the officer searched Mr. Rife's person and found a pipe. The police officer then searched the backpack and discovered needles, a knife, and an eyeglasses case containing another pipe and a white crystal-like substance, which tested positive for methamphetamine. During the search, the officer asked Mr. Rife several questions, but could not say definitively when he advised Mr. Rife of his *Miranda* rights.

Because Mr. Rife was not holding the backpack during or immediately preceding the officer's search, the bag did not constitute a part of Mr. Rife's person for purposes of a search incident to arrest exception to the warrant requirement and suppression of the evidence found in the backpack is required. In addition, Mr. Rife's statements were inadmissible because he was questioned before receiving *Miranda* warnings. The trial court's denial or Mr. Rife's motions to suppress was error and reversal is required.

B. ASSIGNMENTS OF ERROR

1. The trial court erred when it found Mr. Rife stated there were "some pipes and dope" in the backpack. CP 64 (line 12); CP 68 (line 10).

2. The trial court erred when it found the officer advised Mr. Rife of his *Miranda* rights prior to asking him about the substance and pipe found in his bag. CP 64 (lines 19-23); CP 68 (lines 17-22).

3. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 2(a). CP 65.

4. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 2(b). CP 65.

5. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 2(c). CP 65.

6. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 4(a). CP 69.

7. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 4(b). CP 69.

8. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 4(c). CP 69.

9. To the extent it is deemed a finding of fact, the trial court erred when it entered conclusion of law 4(h). CP 69.

10. The trial court erred when it denied Mr. Rife's CrR 3.6 motion to suppress evidence. CP 65.

11. The trial court erred when it denied Mr. Rife's CrR 3.5 motion and admitted Mr. Rife's pre-*Miranda* statements into evidence. CP 69.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When arresting an individual, an officer may conduct a warrantless search of that person. Such a search includes the person and any items in that person's actual and exclusive possession at or immediately preceding the arrest. Is suppression required where, during Mr. Rife's arrest, an officer searched Mr. Rife's backpack, which was hanging on the back of Mr. Rife's wheelchair and out of his reach, and discovered methamphetamine and drug paraphernalia?

2. A court may not admit into evidence the fruits of a custodial interrogation conducted without the benefit of *Miranda* warnings. A public safety exception allows for pre-*Miranda* questioning only if it is conducted solely for safety purposes and the circumstances are sufficiently urgent to justify the questioning. Mr. Rife was under

arrest, the backpack was not part of his person, and the officer could not say definitely when he advised Mr. Rife of his *Miranda* rights. Is suppression required when statements were admitted in violation of Mr. Rife's privilege against self-incrimination?

D. STATEMENT OF THE CASE

Travis Rife was sitting in his wheelchair on the side of the street. 9/17/15 RP 6-7. Officer Nicholas Haughian recognized Mr. Rife and had information that Mr. Rife had outstanding misdemeanor warrants for his arrest. 9/17/15 RP 7, 21. After confirming these warrants, the officer approached Mr. Rife and called him by name. 9/17/15 RP 7. When Mr. Rife responded, he was taken into custody and placed under arrest. 9/17/15 RP 8.

Officer Haughian handcuffed Mr. Rife's arms behind his back while Mr. Rife remained in his wheelchair. 9/17/15 RP 8. He then searched Mr. Rife's person and located a pipe. 9/17/15 RP 9. The officer next conducted a search of Mr. Rife's backpack, which was hung over the back of the wheelchair and out of Mr. Rife's reach. 9/17/15 RP 9-11, 20. While searching the backpack and prior to offering a *Miranda* warning, Officer Haughian asked if anything would "stick him" and Mr. Rife responded that there would probably be "rigs"

(needles for injecting narcotics) in the backpack. 9/17/15 RP 10; CP 64. Officer Haughian found an eyeglasses case, a pipe, a white crystal-like substance, needles, and a knife in Mr. Rife's backpack. 9/17/15 RP 9-11.

Mr. Rife was not wearing his backpack before, during, or after Officer Haughian's search. 9/17/15 RP 11. He could not access his backpack while sitting in the wheelchair due to injuries caused by six strokes. 9/17/15 RP 30. To reach the bag, Mr. Rife would have needed to get out of his wheelchair. 9/17/15 RP 31.

Officer Haughian tested the white crystal-like substance, which came back positive for methamphetamine. 9/17/15 RP 21-22; CP 45. Officer Haughian also searched Mr. Rife's rolling-bucket and found nothing "notable." 9/17/15 RP 12. At some point, the police officer asked and Mr. Rife responded to questions about the crystal-like substance and pipes. 9/17/15 RP 16-17, 34. The police officer testified he "believe[d]" he read Mr. Rife his *Miranda* warnings before asking these questions. 9/17/15 RP 14, 34.

Mr. Rife moved to suppress his statements to the officer and the physical evidence discovered in the backpack, arguing that the backpack was not in his actual and exclusive possession at or

immediately preceding the time of arrest. CP 84-88. The trial court denied Mr. Rife's motion after an evidentiary hearing. CP 63.

At a stipulated facts trial the court found Mr. Rife guilty of possession of methamphetamine and possession of drug paraphernalia. CP 36. The court committed Mr. Rife to prison for 90 days for possession of drug paraphernalia and 12 months for possession of methamphetamine. CP 14.

E. ARGUMENT

1. The trial court erred when it denied Mr. Rife's motion to suppress the evidence seized in a warrantless search of his backpack.

a. Warrantless searches are per se unconstitutional.

Warrantless searches are unreasonable per se under both the Fourth Amendment and article 1, section 7. *See State v. Rankin*, 151 Wn.2d 689, 694-95, 92 P.3d 202 (2004); *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). This presumption is subject to only a few "jealously and carefully drawn exceptions to the warrant requirement." *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). The State bears the burden of demonstrating whether a search fits within one of these exceptions. *Id.* (citing *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980)).

A search incident to arrest is an exception to the warrant requirement and allows immediate searches to ensure the safety of a law enforcement officer or to preserve evidence of the crime of arrest. *State v. Valez*, 167 Wn.2d 761, 773, 224 P.3d 751 (2009); *Chimel v. California*, 396 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). However, this exception is narrowly drawn. *State v. Jones*, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002). Any fruits of an unconstitutional search and seizure must be suppressed. *State v. Duncan*, ___Wn.2d___, 2016 WL 1696698 at *3 (No. 90188-1, April 28, 2016).

When a defendant challenges a trial court's denial of his motion to suppress, this Court reviews the trial court's conclusions of law de novo. *State v. VanNess*, 186 Wn. App. 148, 154, 344 P.3d 713 (2015).

b. <u>Under a narrowly drawn exception, an officer may perform a warrantless search incident to arrest (1) of the arrestee's person and (2) of the area within the arrestee's immediate control.</u>

Two types of warrantless searches may be made incident to arrest: (1) a search of the arrestee's person and (2) a search of the area within the arrestee's immediate control. *State v. MacDicken*, 179 Wn.2d 936, 940, 319 P.3d 31 (2014). The first type of search incident to arrest is considered a "reasonable search as part of the arrest of the person." *State v. Brock*, 184 Wn.2d 148, 154, 355 P.3d 1118 (2015)

(citing *United States v. Robinson*, 414 U.S. 218, 225-26, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973)). In this type of warrantless search, Washington courts "presume safety and evidence justifications exist when taking. . . personal items into custody as part of the arrestee's person." *Brock*, 184 Wn.2d at 154.

For the second type of search incident to arrest, a lawful search of an area within the arrestee's immediate control must be justified by either officer safety or evidence preservation, with an articulable concern that the arrestee can access the item so to draw a weapon or destroy evidence. *State v. Byrd*, 178 Wn.2d 611, 617, 310 P.3d 793 (2013).

While the trial court found the backpack was both a personal effect and within Mr. Rife's immediate control, it did not find the State articulated a concern about officer safety or evidence preservation. CP 65. This is unsurprising, as the State made no claim that either evidence preservation or officer safety justified Officer Haughian's warrantless search of Mr. Rife's backpack. *See* CP 81-83; 9/17/15 RP 36-40, 45-46. Instead, the trial court accepted the State's argument that Officer Haughian's search incident to arrest was justified because Mr.

Rife's backpack constituted a personal effect. CP 81-83; 9/17/15 RP 36-40.

c. Because Mr. Rife's backpack was not under his immediate and exclusive control, it did not constitute a part of his person.

A search of an arrestee's person encompasses both the arrestee and the personal articles in the arrestee's actual and exclusive possession at or immediately preceding the time of arrest. *Byrd*, 178 Wn.2d at 623, 310 P.3d 793. Such a search does not include "articles within the arrestee's reach but not actually in his possession." *Id*. Constructive possession is insufficient; the search must extend to only those articles immediately associated with the arrestee. *Id*.

An article is "immediately associated" with an arrestee's person if the arrestee has actual possession at or immediately preceding the time of arrest. *Id*. at 621, 310 P.3d 793. A lawful search of an arrestee's person extends "only to articles 'in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person.' " *Id.* at 623, 310 P.3d 793 (quoting *United States v. Rabinowitz*, 339 U.S. 56, 78, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (Frankfurter, J., dissenting)).

Our supreme court has reviewed searches incident to arrest of an arrestee's personal items in three recent cases: *Byrd*, 178 Wn.2d at 614; *MacDicken*, 179 Wn.2d at 938; and *Brock*, 184 Wn.2d at 150. Although the court held these searches to be lawful, the items searched by police were in the arrestees' arms during or immediately preceding the warrantless search incident to arrest. *See Byrd*, 178 Wn.2d at 624 (defendant was arrested while holding her purse on her lap); *MacDicken*, 179 Wn.2d at 939, 942 (defendant was carrying a laptop bag and pushing a rolling duffel bag when he was arrested); *Brock*, 184 Wn.2d at 151 (defendant was carrying a backpack when arrested).

Here, Mr. Rife's backpack was not in his arms, but instead secured on the back of his wheelchair. Neither *Byrd* nor its progeny control in Mr. Rife's case. As this Court's dissenting judge observed in *Byrd*, "the purse was within Ms. Byrd's reach and could even be described as *on* her person, not only at the stop but at the time of arrest." *Byrd*, 178 Wn.2d at 623 (citing *State v. Byrd*, 162 Wn. App. 612, 618, 258 P.3d 686 (Brown, J., dissenting) (emphasis added)). Unlike Ms. Byrd's purse, Mr. Rife's backpack was not *on* Mr. Rife at any time during his interaction with Officer Haughian. Nor was Mr.

Rife wearing his backpack when he was arrested. Instead, the backpack was secured on the back of Mr. Rife's wheelchair.

Our supreme court noted in *Byrd* that "[t]he time of arrest rule reflects the practical reality that a search of the arrestee's person to remove weapons and secure evidence must include more than his literal person. . . " 178 Wn.2d at 621. The police exceeded this practical reality in Mr. Rife's case. In searching the zipped backpack located on the back of Mr. Rife's wheelchair, this search encompassed more than Rife's literal person, moving well past the requirements of actual and exclusive possession as set out it *Byrd*, *MacDicken*, and *Brock*. None of these cases contemplated extending *Byrd*'s "more than [the arrestee's] literal person" to include a bag completely disconnected from that arrestee's person.

In addition, although the search incident to arrest exception has been applied to the bags and purses of arrested individuals, this Court has treated closed packages and bags as "unique" for purposes of police searches. *State v. Wisdom*, 187 Wn. App. 652, 670, 349 P.3d 953 (2014) (citing *California v. Acevedo*, 500 U.S. 565, 571, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991)). Courts recognize a person's privacy interest in closed luggage, whether locked or unlocked. *Houser*, 95

Wn.2d at 157. As this Court observed in *Wisdom*, a person does not "rummage through a woman's purse" or a shaving kit because "of secrets obtained therein." 187 Wn. App. at 670, 349 P.3d 953. Like the shaving kit, Mr. Rife's zipped backpack contained his personal items and the bag was "intended to safeguard the privacy" of those personal effects. *Id.*

Mr. Rife did not have actual and exclusive possession of his backpack at or immediately before his arrest. The bag was located on the back of Mr. Rife's wheelchair throughout his contact with police as well as during his arrest. The search was constitutionally impermissible because the backpack was never located in such "immediate physical relation" to Mr. Rife to be a "projection of his person." *Id.*

d. <u>The trial court's finding that the search of Mr. Rife's backpack was justified because it was within his immediate control and access is unsupported by the evidence.</u>

The trial court found that Mr. Rife's backpack was a personal effect immediately associated with his person and located "within [Mr. Rife's] immediate control and access" CP 65. The court's ruling conflates the "two distinct branches of the search incident to arrest exception"— (1) a search of the arrestee's person and (2) a search of

the area within the arrestee's immediate control. *Byrd*, 178 Wn.2d at 620.

A valid search of the area within an arrestee's immediate control requires justification grounded in officer safety or evidence preservation, with an articulable concern that the arrestee could access an item such as a weapon or destroy evidence. *Brock*, 184 Wn.2d at 154. In Mr. Rife's case, the State neither presented evidence for nor argued that officer safety or evidence preservation justified the search of Mr. Rife's backpack. Therefore, the search incident to arrest exception for areas within an arrestee's immediate control does not justify Officer Haughian's search of Mr. Rife's backpack.

The search of Mr. Rife's backpack was unlawful, and the trial court erred when it denied his motion to suppress. This Court should reverse.

2. The trial court erred in admitting Mr. Rife's statements in response to police questioning conducted prior to *Miranda* warnings.

a. Law enforcement must provide a *Miranda* warning to a suspect prior to conducting a custodial interrogation.

To protect a defendant's Fifth Amendment right against self-incrimination, a suspect must be given the right to remain silent and the

right to the presence of counsel during any custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602 (1966); *State v. Richmond*, 65 Wn. App. 541, 544, 828 P.2d 1180 (1992). "*Miranda* warnings must be given when a suspect endures (1) custodial (2) interrogation (3) by an agent of the State." *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004) (citing *State v. Sargent*, 111 Wn.2d 641, 647, 762 P.2d 1127 (1988)). Without *Miranda* warnings, a suspect's statements during custodial interrogation are presumed involuntary and are therefore inadmissible. *Id.*

A person is "in custody" for *Miranda* purposes if a reasonable person would not have felt free to terminate the interrogation and leave. *State v. Rosas-Miranda*, 176 Wn. App. 773, 779, 309 P.3d 728 (2013). An interrogation is " 'words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.' " *State v. Miller*, 165 Wn. App. 385, 389, 267 P.3d 524 (2011). Failure to give *Miranda* warnings invokes a presumption of compulsion. *State v. Lozano*, 76 Wn. App. 116, 119, 882 P.2d 1191 (1994). A *Miranda* claim is an issue of law that is reviewed de novo. *State v. Daniels*, 160 Wn.2d 256, 261, 156 P.3d 905 (2007).

b. The officer interrogated Mr. Rife while he was in custody.

Mr. Rife was "in custody" for *Miranda* purposes because he was handcuffed and placed in the back of the patrol car, unable to terminate the interrogation and leave. 9/17/15 RP 9, 19-20. After discovering a glass pipe in the pocket of Mr. Rife's pants and prior to offering *Miranda* warnings, the police officer asked Mr. Rife if anything in his backpack would "stick" the officer. 9/17/15 RP at 10; CP 64. Mr. Rife responded that needles for ingesting narcotics would probably be present in the backpack. *Id.* Although the trial court found that Mr. Rife stated there would probably be "some pipes and dope" in the backpack, this finding was made in error, as no evidence to this effect was presented at the suppression hearing. CP 64, 68.

Officer Haughian admitted he was looking for evidence of a crime when he searched the backpack. 9/17/15 RP 25. He had already discovered a glass narcotics pipe in Mr. Rife's pants pocket and had reason to suspect that Mr. Rife possessed contraband. Therefore, asking if anything would "stick" the officer was reasonably likely to elicit an incriminating response from Mr. Rife. *Miller*, 165 Wn. App. at 389 (questions police should know are reasonably likely to elicit incriminating responses are the functional equivalent of interrogation).

The officer was required to advise Mr. Rife of his *Miranda* rights before beginning his questioning.

c. The State failed to demonstrate the public safety exception to *Miranda* was satisfied.

The police may question a defendant prior to providing a *Miranda* warning if the question satisfies both elements of the public safety exception: (1) is solely for the purpose of officer or public safety, and (2) the circumstances are sufficiently urgent to warrant an immediate question. *State v. Spotted Elk*, 109 Wn. App. 253, 260, 34 P.3d 906 (2001). The question does not constitute an interrogation in violation of *Miranda* unless both conditions are met. *Id.*

Officer Haughian's question about whether something would "stick" him in Mr. Rife's backpack fails to meet both elements of the public safety exception to *Miranda*. Even if Officer Haughian's question was asked for the purposes of officer or public safety, the circumstances were not sufficiently urgent to warrant immediate questioning. *Spotted Elk*, 109 Wn. App. at 260; CP 69.

The search incident to arrest of Mr. Rife was not of his person and the State made no claim that officer safety justified the warrantless search of Mr. Rife's backpack. *See* CP 81-83; 9/17/15 RP 36-40, 45-46. Mr. Rife was handcuffed, in custody, and "wasn't going

anywhere." 9/17/15 RP 9, 46. There is no indication that the scene was busy or that Mr. Rife posed an apparent threat to the officer or public safety. *Spotted Elk*, 109 Wn. App. at 260.

d. Suppression of all of Mr. Rife's statements was required.

The record is unclear as to when the officer advised Mr. Rife of his *Miranda* rights, and the trial court's finding to the contrary is error. CP 64, 68. The police officer testified that he searched Mr. Rife's person, tested the items discovered in the backpack, and placed Mr. Rife in the patrol car. 9/17/15 RP 22. The officer also testified that he "believe[d]" he read Mr. Rife his Miranda warnings "at the time [he] placed [Mr. Rife] into the back of the patrol car," and subsequently asked Mr. Rife about the substance and glass pipe in his backpack. 9/17/15 RP 14, 34.

However, the trial court questioned whether this timeline was reasonable, inquiring why the officer would ask Mr. Rife to identify the substance "if in fact [the officer] had field tested the substance" prior to asking the question. 9/17/15 RP 34-35. The trial court considered whether a reasonable reading of the record was not that the officer asked Mr. Rife about the white, crystal-like substance and pipes prior to

Mirandizing Mr. Rife and after field testing the substances. 9/17/15 RP 35.

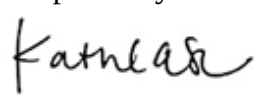
Because the police officer's questions to Mr. Rife do not satisfy both elements of the public safety exception to *Miranda*, suppression was required. Mr. Rife's responses regarding the pipes, white, crystal-like substance, and "rigs" were given without the benefit of *Miranda* warnings and therefore inadmissible. Moreover, the trial court erred in finding that Mr. Rife's stated there would probably be "some pipes and dope" in his backpack, as no evidence was presented at trial establishing this fact. CP 64. The trial erred in admitting Mr. Rife's statements and this court should reverse.

F. CONCLUSION

This Court should reverse the trial court's CrR 3.6 order and suppress all evidence obtained subsequent to Mr. Rife's arrest, including the methamphetamine and pipe, because the search of the backpack that uncovered the drug and drug paraphernalia was unlawful. Additionally, this Court should suppress all statements obtained prior to Mr. Rife's *Miranda* warnings because the police officer's questioning did not satisfy the public safety exception.

DATED this 18th day of May, 2016.

Respectfully submitted,



_____

KATHLEEN A. SHEA (WSBA 42634)
Washington Appellate Project (91052)
Attorneys for Appellant

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

STATE OF WASHINGTON, Respondent/Cross-appellant, TRAVIS RIFE, Appellant-Cross-respondent.	)))))))))	NO. 74217-5-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF MAY, 2016, 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]	SETH FINE, DPA [sfine@snoco.org] SNOHOMISH COUNTY PROSECUTOR'S OFFICE 3000 ROCKEFELLER EVERETT, WA 98201	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL
[X]	TRAVIS RIFE 930323 MONROE CORRECTIONAL COMPLEX TWIN RIVERS UNIT PO BOX 777 MONROE, WA 98272-0777	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON, THIS 18TH DAY OF MAY, 2016.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711