

TABLE OF CONTENTS

- A. ISSUES PRESENTED.
- B. STATEMENT OF CASE.
- C. ARGUMENT PRESENTED.
- D. CONCLUSION.

ISSUES PRESENTED

- A. WAS THE TRAFFIC STOP, SEARCH AND SEIZURE OF APPELLANT A VIOLATION OF THE UNITED STATES CONSTITUTION.?
- B. DID THE TRIAL COURT VIOLATE APPELLANTS RIGHTS TO BE CONVICTED OF CRIMES AS CHARGED IN THE INFORMATION.? IN VIOLATION OF THE SIXTH AMENDMENT.?
- C. WAS THE CHARGING INFORMATION DEFECTIVE WHEN IT CHARED APPELLANT WITH "USE OF DRUG PARAPHERNALIA.?
- D. DID THE JURY INSTRUCTIONS RELIEVE THE STATE OF ITS BURDEN TO PROVE BEYOND A REASONABLE DOUBT ALL ELEMENTS OF THE CRIME CHARGED.?

STATEMENT OF FACTS.

It was testified to that Appellant was in his Car waiting for Michelle Gundy to back out of the driveway of 12211, 211th Ave. East, Bonny Lake, WA. RP. 59. And Before Appellant could pull all the way around the cul-de-sac, a Deputy with his lights on, pulled onto the cul-de-sac, and blocked the road back to the main road. RP. 63-64. 122. Up until this point Appellant was never in view, or even close enough to view the license plate of the vehicle, or to see the valid trip permit displayed in the rear window of the vehicle.

Appellant was told that he was pulled over for no tabs. RP. 66. The Officer testified he asked Appellant if he had a license, registration, and proof of insurance, and his name.

When Appellant gave him his name, he told the officer that he did not have a License. RP. 66. The Officer then had Appellant exit the vehicle, and put Appellant immediately into cuffs. RP. 67. (this was all in 30 seconds or less) As soon as Appellant was in cuffs, the second deputy O'Niel arrived on the scene, and asked deputy Tjossem if he could help him.

Officer Tjossem had O'Niel take Appellant to his patrol car to pat search Appellant incident to arrest. RP. 67.

Then Deputy Tjossem, went directly to the passenger door of Appellants vehicle to search it. Where he found

a knife inside a box, and a glass pipe under the drivers seat. While deputy Tjossem was searching the vehicle, Deputy O'Niel was searching Appellants pockets.

The Items Deputy O'Niel found on Appellant where (a) crib notes, (b) a collapsible baton, (c) a scale, (d) and a small nylon pouch with 8 plastic baggies in it. 5 of the baggies where new and "unused". 2 of them had "residue", and 1 had .1 gram of methamphetamine, (a small clear crystal). RP. 81.

Deputy Tjossem testified, As he came around the corner of 123rd street court east, headed Northbound, it turns into 211th. On 211th a vehicle backed out of a residence and began to travel northbound also. He noticed there was no year tab, so he ran the vehicle license plate. Then on his computer it came back as expired 1999. RP. 16. Then as Appellant reached the cul-de-sac, which was off to the West, the vehicle immediately began to turn into the cul-de-sac. That's when he activated his emergency lights for a traffic stop. RP. 59-60.

He further testified he followed for a distance of 5 or 6 houses "A Block". But in the State Trial Exhibit G. Which is an aerial photo of the house and cul-de-sac in question. It shows that actual distance the vehicle traveled was actually the distance of one residential house in Distance.

Appellant testified at RP. 60-62, 130-31, the neighbors

driveway is almost directly across the street. A distance of only 40 to 50 feet. States Exhibit G. shows the Driveway. But the distance from the corner to the driveway Appellant was backing out of was 5 to 6 houses between the two points.

It was testified to by Deputy Tjossem at RP. 29, 31, 38, that he run the plates from that house on previous occasions, and knowing Tami Scholz that lived at the residence. RP. 32. He admitted to making two other arrests associated with the house.

It was testified to at RP. 32-33, 34. That there where two Deputies responsible for Patrolling 640 Square Miles that night. And both happened to be at the exact same place at the exact same time for that Shift. And at the time of the Stop in this case, Deputy O'Niel was less than 30 seconds away from the scene. And made it there within the 30 seconds. RP. 95, And allegedly came from the other direction heading Southbound to the cul-de-sac. RP. 53.

On the stand Deputy O'Niel admits to Deputy Tjossem, and himself discussed this residence before this particular traffic stop. His Exact words are "There have been past conversations between Deputy Tjossem and I." RP. 29, 37, 38.

Deputy Tjossem testified and admits to investigating the residence because of a guy who used to live there named Todd Stack House. Both officers knew the house. And the potential illegal activities around there. So the officer

knew to run any plates he found there.

At RP. 14, Deputy Tjossem further testifies to other persons that he knows. Such as Joeseeph Edger. RP. 28. He has had prior contact and knows Mike Howe which he has arrested a couple times. RP. 163. When he looks at Appellants phone numbers he recognizes his phone number.

At RP. 97-98, Tami Scholz testified to the "Trip Permit" in the Rear Window of the vehicle when they released it to her. RP. 107, 109.

At RP. 122-124, there was testimony that the deputy could not have seen "no tabs" on the vehicle, RP. 14, 155. At 50 minutes past Midnight.

Appellant was Charged and Convicted of "Intent to Deliver to another person a controlled substance. In Count I. There is no Counts III or IV. Charged.?

Appellant was Charged and Convicted of Count II. the charge of Unlawful Use of Drug Paraphernalia.

Appellant was charged and convicted of Counts V, IV. Of Bail jumping.

This Appeal is based upon the Records that where provided to Appellant by Appellant Counsel.

A. WAS THE TRAFFIC STOP, SEARCH AND SEIZURE OF APPELLANT A VIOLATION OF LAWS OF THE UNITED STATES CONSTITUTION.?

At RP. 59. It was testified to that Appellant was waiting for Michelle Gundy to back out of the driveway of 12211, 211th Ave. East, Bonny Lake, WA.

At RP. 59-60, Appellant observed headlights coming around the corner at the end of the block of 211th. At a distance of at least 5 residential properties. Appellant instead of blocking the road, decided to pull forward and wait in a cul-de-sac until Michelle Gundy pulled out to the driveway, so that he could re-park in the driveway.

Before Appellant could pull all the way around the cul-de-sac, a Deputy with his lights on, pulled onto the cul-de-sac, and blocked the road back to the main road. RP. 63-64. 122.

Up until this point Appellant was never in view, or even close enough to view the license plate of the vehicle, or to see the valid trip permit displayed in the rear window of the vehicle.

Appellant was surprised when Tjossem told him that he was pulling him over for no tabs. RP. 66. The Officer testified he asked Appellant if he had a license, registration, and proof of insurance, and his name.

When Appellant gave him his name, he told the officer that he did not have a License. Not that it was suspended. RP. 66. The Officer then had Appellant exit the vehicle,

and put Appellant immediately into cuffs. RP. 67. (this was all in 30 seconds or less) As soon as Appellant was in cuffs, the second deputy O'Niel arrived on the scene, and asked deputy Tjossem if he could help him.

Officer Tjossem had O'Niel take Appellant to his patrol car to pat search Appellant incident to arrest. RP. 67.

Then Deputy Tjossem, went directly to the passenger door of Appellants vehicle to search it. Where he found a knife inside a box, and a glass pipe under the drivers seat.

While deputy Tjossem was searching the vehicle, Deputy O'Niel was searching Appellants pockets.

The Items Deputy O'Niel found on Appellant where (a) crib notes, (b) a collapsible baton, (c) a scale, (d) and a small nylon pouch with 8 plastic baggies in it. 5 of the baggies where new and "unused". 2 of them had "residue", and 1 had .1 gram of methamphetamine, (a small clear crystal). RP. 81.

After Appellant was in Custody the deputies released the vehicle to Tami Scholz, and told her that she had 24 hours to move the vehicle.

Tami Scholz was able to drive the vehicle across the street to her residence without being towed. RP. 1415, 23-25, 59-60, 151-152.

Deputy Tjossem testified, As he came around the corner of 123rd street court east, headed Northbound, it turns

into 211th. On 211th a vehicle backed out of a residence and began to travel northbound also. He noticed there was no year tab, so he ran the vehicle license plate. Then on his computer it came back as expired 1999. RP. 16. Then as Appellant reached the cul-de-sac, which was off to the West, the vehicle immediately began to turn into the cul-de-sac. That's when he activated his emergency lights for a traffic stop. RP. 59-60.

He further testified he followed for a distance of 5 or 6 houses "A Block". But in the State Trial Exhibit G. Which is an aerial photo of the house and cul-de-sac in question. It shows that actual distance the vehicle traveled was actually the distance of one residential house in Distance.

Appellant testified at RP. 60-62, 130-31, the neighbors driveway is almost directly across the street. A distance of only 40 to 50 feet. States Exhibit G. shows the Driveway. But the distance from the corner to the driveway Appellant was backing out of was 5 to 6 houses between the two points.

Appellant asks this Court, how could the officer catch up to the vehicle before it reached the cul-de-sac, and see that the tabs, run the plates, get a return back, (RP. 122-124) and make the stop in the distance of 40 to 50 feet.? Or the distance of one residential house length.?

It was testified to by Deputy Tjossem at RP. 29, 31, 38, that he run the plates from that house on previous

occasions, and knowing Tami Scholz that lived at the residence. RP. 32. He admitted to making two other arrests associated with the house.

It was testified to at RP. 32-33, 34. That there where two Deputies responsible for Patrolling 640 Square Miles that night. And both happened to be at the exact same place at the exact same time for that Shift. And at the time of the Stop in this case, Deputy O'Niel was less than 30 seconds away from the scene. And made it there within the 30 seconds. RP. 95, And allegedly came from the other direction heading Southbound to the cul-de-sac. RP. 53.

On the stand Deputy O'Niel admits to Deputy Tjossem, and himself discussed this residence before this particular traffic stop. His Exact words are "There have been past conversations between Deputy Tjossem and I." RP. 29, 37, 38.

Deputy Tjossem testified and admits to investigating the residence because of a guy who used to live there named Todd Stack House. Both officers knew the house. And the potential illegal activities around there. So the officer knew to run any plates he found there.

At RP. 14, Deputy Tjossem further testifies to other persons that he knows. Such as Joeseeph Edger. RP. 28. He has had prior contact and knows Mike Howe which he has arrested a couple times. RP. 163. When he looks at Appellants phone numbers he recognizes his phone number.

At RP. 77-78, Appellant testified that he had just bought the vehicle from Mike Howe, at his house before Appellant came to the residence of Tami Scholz that night. It was testified to that Mike Howe bought the vehicle from Joeseeph Edgar, then sold it to Appellant. RP. 81-82.

After Appellant was arrested, the vehicle was sent back to Mike Howe, who then sold it to his father-in-law Ronald Crawford. also 10 days after Appellant was arrested. Ronald Crawford was pulled over and arrested for the exact same reasons Appellant was pulled over and arrested.

At RP. 97-98, Tami Scholz testified to the "Trip Permit" in the Rear Window of the vehicle when they released it to her. RP. 107, 109. Tami Scholz was concerned about the vehicle being in her driveway without knowing anything about it. That is why she checked the Permit in the window. RP. 121. But what is more importantly, and rings true in her testimony is the car was trouble. And it was confusing to her why they (the police officers) were going to let her drive this car from the cul-de-sac back to her place. And so she wanted to make sure that basically she wasn't going to get arrested of wasn't being set up for this vehicle.

At RP. 122-124, there was testimony that the deputy could not have seen "no tabs" on the vehicle, RP. 14, 155. At 50 minutes past Midnight. Or even a valid trip permit from the way they (deputies) described it, and the layout

of this particular roadway. Especially with the short distance traveled by the Appellant, and the residential roads being completely dark at night.

The vehicle pulled over that night, was a known vehicle to police, on at least two previous owners who had possession of it were known to police. RP. 77-78. Which both officers admitted to knowing both Mike Howe, and Joseph Edger.

Deputy Tjossem knew there wasn't a year tab on the vehicle prior to pulling it over. And Appellate believes that Deputy Tjossem pulled the vehicle over strictly to search for drugs because of the house it was at, his knowledge of the vehicle, and the area he was in. RP. 32, 43. That is why Both Deputies that were required to patrol 640 square miles during their shift, are both conventionally positioned in Both Directions. North and South from the house. at 12211, 211th ave. East. So they would know when the vehicle left the residence that night.

It was testified that it only took Officer O'Neil 30 seconds or less to drive onto the scene at the cul-de-sac. RP. 99. from another direction. RP. 44, 66.

This is further supported by the fact that Appellant was already being taken into custody and handcuffed. RP. 67. Deputy Tjossem handed Appellant over to Officer O'Neil to pat search, while Officer Tjossem went directly to the back to the vehicle to search it without a warrant or

probable Cause, to see what he could find. RP 81. Also the reason why they (the officers) allowed Tami Scholz to take the vehicle back to her house is so they (the officers) would get future chances to pull the vehicle over and make additional arrests. Which is exactly what happened 10 days latter with Ronald Crawford, who was arrested and charged for the exact same charge. RP. 81-82. Also see attached Motion to Suppress.

B. DID THE TRIAL COURT VIOLATE APPELLANTS CONSTITUTIONAL RIGHTS TO BE CONVICTED OF THE CRIME CHARGED. ACCORDING TO THE CHARGING INFORMATION.? IN VIOLATION OF THE SIXTH AMENDMENT.?

Under Current Case law, the Constitution, and standing Laws, a Defendant can not be found guilty of crimes not charged, or crimes not properly charged in the Charging Documents. State v. Kjorsivik, 117 Wn.2d 93, 103, 812 P.2d 86 (1991). A Defendant must have knowledge of the Crime Charged to be able to present a Defense to that charge.

Here in this Case Appellant was charged with the crime of "WITH INTENT TO DELIVER TO ANOTHER, A CONTROLLED SUBSTANCE." See Charging Information Count I.

At no time during Appellants Arrest, Charging, Trial, or anytime was there ever introduced a "Person" to whom Appellant was to have delivered the "Controlled Substance."

At no time was Appellant Accused in Trial of Delivering a Controlled Substance to anyone. Or to any other "Person" as alleged.

Under Kjorsivik, the Charging Document must be true and Correct. And here, there was no "Person" that the alleged Controlled Substance could have been delivered too. And a Defendant can not defend against the crime if there are Extra Elements of the crime Charged. This Violated Appellants right to a Fair Trial.

C. WAS THE CHARGING INFORMATION DEFECTIVE WHEN IT CHARGED APPELLANT WITH "USE OF DRUG PARAPHERNALIA." ?

Appellant was Charged in County II with the crime of UNLAWFUL USE OF DRUG PARAPHERNALIA."

When Appellant was Arrested he had Possession of a Scale. And 5 Baggies. RP. 81.

At no time from the Stop of the vehicle, was Appellant in the Process of Using any "Drug Paraphernalia. He was in the Vehicle for only a minutes until the Officer had him Exit. To the Finding of the Scale and Baggies.

There is nothing in the Record of the Court or Arrest that placed Appellant Using Drug Paraphernalia. And it was Error to charge Appellant with a Crime he did not commit.

Under State v. Kjorsivik, 117 Wn.2d 93, 103, 812 P.2d 86 (1991). The Charging information must be true and correct.

Here, the issue is simple. Appellant was charged with use of Drug Paraphernalia. The Word "Use" is clear. Under Websters Dictionary, it means to Use. To make useful. And here Appellant was not using Drug Paraphernalia, he was possessing it. And no one ever asked or question whether he had used the material.

The charged crime did not State all the Elements, and did not Describe what Crime Appellant actually committed. Which was Possession of Drug Paraphernalia. Not Use of the items. And it was error.

D. DID THE JURY INSTRUCTIONS RELIEF THE STATE OF ITS BURDEN TO PROVE BEYOND A REASONABLE DOUBT ALL ELEMENTS OF THE CRIME CHARGED.?

The State of Washington was relieved of its Burden to Prove Beyond a Reasonable Doubt All Elements of the Crimes Charged when they did not have to Prove. (1) That the Defendant "Delivered a Controlled Substance from one person to another." (2) Did not have to prove that Defendant "Used Drug Paraphernalia".

Appellant assigns error to the Jury Instruction #9. Which fails to state that Delivery is from one person to another. As stated by the Prosecution at RP. 391, 393, 395, 403-404.

Under the Law Possession has three elements as admitted by the Prosecution at RP. 395.

But the Actual Jury Instruction only list 2 Elements. "Delivery to a Person" was left out.

Appellant assigns Error to Jury Instruction #16

The Instruction holds that Defendant "Unlawfully Use drug paraphernalia."

But at no time during the whole of the Trial did the Prosecution ever state that Appellate ever used the scales or baggies. And it was error.

Appellant assigns error to jury instruction #18. "Delivery mean... from one person to another".

Here the simple fact remains, there was no Other person. And Appellant can not Deliver to himself.

Anytime the State is relieved of its burden to prove every element of the crime charged it is Reversible Constitutional Error that must be corrected. State v. Brown, 147 Wn.2d 330, 339, 58 P.3d 889 (2002); State v. Byrd, 125 Wn.2d 707, 712-13, 882 P.2d 396 (1995).

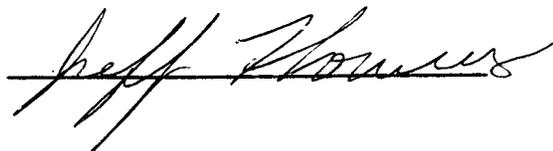
Here in this case, the State did not produce one shred of evidence that Appellant Delivered, Intended to Deliver any Drug. Nor did the State produce any evidence that Appellant "Used Drug Paraphernalia. And the Jury instructions relieved the State of having to Prove beyond a reasonable doubt any Delivery, or Use. And it is reversible error.

CONCLUSION.

Appellant asks this Court to Reverse his Convictions for the Police Officers failure to follow the Law concernring Probable Cause of Search and Seizure, and was convicted of crimes he did not commit. And this Court must Correct these Constitutional Violations.

Respectfully Submitted

Dated this 19th day of April, 2009

A handwritten signature in cursive script, appearing to read "Jeff Thomas", written over a horizontal line.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

STATE OF WASHINGTON,)
Plaintiff,) NO. 07-1-02831-7
)
vs.) DEFENDANT'S MEMORANDUM
) RE: MOTION TO SUPPRESS
JEFFREY FLOWERS)
Defendant.)
_____)

I. INTRODUCTION

The defendant Jeffrey Flowers, moves this court to grant his motion to suppress evidence pursuant to the United States and Washington constitutions. Mr. Flowers was unlawfully stopped for allegedly lacking a yearly sticker on the rear license plate of the car he was driving on June 8, 2007. The car was lawfully registered with a trip permit and the stop was a pretext to search.

II. STATEMENT OF FACTS

The police report claims that on May 27, 2007, Pierce County Deputy Robert Tjossem was traveling northbound on 211th Avenue E. in the 12200 block. He claims to have seen a

1 vehicle with the license plate 584-FTR driving without a year sticker on the rear license plate.

2 This was Deputy Tjossem's claimed reason for stopping and contacting Mr. Flowers.

3 Just prior to being unlawfully stopped by the deputy, Mr. Flowers had exited the
4 residence 12100 211th Avenue East, Bonney Lake, WA. A friend was trying to leave and Mr.
5 Flowers walked out to move the car blocking his friend's exit from the driveway. The house is
6 located at the end of dead-end road. As Mr. Flowers turned the car in a circle to return the car to
7 the driveway, he was immediately pounced on by the police. From their direction of approach,
8 they could never have seen the year sticker on the rear license plate before having activated their
9 emergency lights. At the time, the car was also validly registered with a trip permit as allowed
10 by R.C.W. 46.16.160, which negates the requirement to have a year sticker. After being
11 unlawfully detained for an uncommitted infraction, the police arrested Mr. Flowers and searched
12 him and the car. The police reports states that the officer found a small amount of
13 methamphetamine, some baggies, a scale, and a pipe.

16 III. ARGUMENT

17 R.C.W. 46.16.160(1) provides in part that, "The owner of a vehicle...which would be
18 required to obtain a license registration for operation on public highways of this state may, as an
19 alternative to such license registration, secure and operate such vehicle under authority of a trip
20 permit issued by this state in lieu of a Washington certificate of license registration..." At the
21 time of the stop, the car driven by Mr. Flowers was lawfully registered with a trip permit. The
22 trip permit was lawfully displayed to be clearly visible from outside the vehicle, as required by
23 WAC 308-97-125. The traffic infraction alleged by Deputy Tjossem was never committed and
24 any further contact or detention was not authorized.

27 MOTION TO SUPPRESS

28 Page 2

1 After originally being detained for an uncommitted traffic offense, Mr. Flowers was
2 arrested and searched. Even if Mr. Flowers was not driving a lawfully registered car, his
3 detention for this infraction was clearly a pretext to search him and his car. In State v. Henry, 80
4 Wn. App. 544, 553, 910 P.2d 1290 (1995), the appellate court noted, “A recent series of
5 decisions from this court has confirmed the principle that, without sufficient justification, police
6 officers may not use routine traffic stops as a basis for generalized, investigative detentions or
7 searches.”

8
9 More specifically in State V. Nichols, 161 Wn.2d 1, 162 P.3d 1122 (2007), a case
10 arguing ineffective assistance of counsel, the Washington Supreme Court reiterated the ban
11 against pretextual stops. The court ruled that a stop for a justifiable traffic infraction does not
12 justify a stop for a criminal investigation. Nichols, at 9. “A pretextual stop occurs when an
13 officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the
14 driving, and not for the purpose of enforcing the traffic code.” Id. At 8. In determining when a
15 pretextual stop has occurred, one must look at the totality of the circumstances. This includes
16 both the subjective intent of the officer and the reasonableness of the officer’s behavior. Id., at 9.
17 The facts in Mr. Flowers’ case show that the traffic infraction was an afterthought, used in an
18 attempt to justify his original detention.
19
20

21 CONCLUSION

22 The defendant, Jeffrey Flowers, asks this court to grant his motion to suppress evidence
23 pursuant to the United States and Washington constitutions. His initial stop for failing to have a
24
25
26

27 MOTION TO SUPPRESS

28 Page 3

1 year sticker on his rear license plate was not a traffic infraction and the stop was a pretext to
2 search him and his car.

3
4
5 DATED: 20 May 2008

6 AARON D. TALNEY WSBA#22154
7 Attorney for Defendant

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 MOTION TO SUPPRESS
28 Page 4

IN THE COURT OF APPEALS OF WASHINGTON

DIVISION II

STATE OF WASHINGTON

Respondent,

v

JEFFREY L. FLOWERS,

Appellant,

NO: 38251-2-II

AFFIDAVIT OF SERVICE

09 APR 22 PM 1:33
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
BY DEPUTY *RS*

IDENTITY OF PARTY.

COMES Now the Appellant by and through Pro Se and swears under the penalty of perjury that I placed in the Washington Correction Center Mail the following;

COURT OF APPEALS DIVISION II Pierce County Prosecutor
Division II 930 Tacoma Avenue S.
950 Broadway Suite 300 Tacoma, WA 98402
Tacoma, WA 98402

REBECCA W. BOUCHY
ATTORNEY FOR APPELLANT
P.O. BOX 1401
Mercer Island, WA 98040

Items sent to each party.

PRO SE SUPPLEMENTAL BRIEF.

Dated this 19th day of April, 2009

Jeff Flowers