

NO. 48147-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

EUAL DAVIS
Appellant.

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

The Honorable James Lawler and Richard Brosey, Judges

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering findings of fact 1.11, that residue was clearly visible in the glass pipe retrieved from Davis.
2. The trial court erred in entering findings of fact 1.14, the residue from the pipe was sent to the WSP.
3. The trial court erred in entering conclusion of law 2.2 that Davis is guilty of possession of methamphetamine.
4. The trial court erred in failing to suppress Davis' statements made to Loss Prevention officer Mr. Ringeisen without Miranda warnings when Ringeisen acted as an agent of the state for Fifth Amendment purposes.
5. The trial court erred in denying the motion to suppress the methamphetamine charged based on an inadequate chain of custody linking Davis to the methamphetamine.
6. The state failed to prove that Davis' possession of the pipe was not unwitting.
7. Ringeisen was acting as a state agent when he

Issues Presented on Appeal

1. Did the trial court err in entering findings of fact 1.11, that

residue was clearly visible in the glass pipe retrieved from Davis?

2. Did the trial court err in entering findings of fact 1.14, that the residue from the pipe was sent to the WSP?
3. Did the trial court err in finding conclusion of law 2.2 that Davis is guilty of possession of methamphetamine, when there was no chain of custody linking the methamphetamine tested by the crime lab and the pipe retrieved from Davis?
4. Did the trial court err in failing to suppress Davis' statements made to Loss Prevention officer Mr. Ringeisen without Miranda warnings when Ringeisen acted as an agent of the state for Fifth Amendment purposes?
5. Did the trial court err in denying the motion to suppress the methamphetamine charged based on an inadequate chain of custody linking Davis to the methamphetamine?
6. Did the state fail to prove that Davis' possession of the pipe was not unwitting?

B. STATEMENT OF THE CASE

Eual Davis was observed by a Wal-Mart Loss prevention Specialist (LPS), Mr. Ringeisen, placing a large flashlight in his waistband and opening

batteries. RP 12-25, 40-51. Ringeisen called the police while he continued to watch Davis. RP 16-18. When police officer Rick McNamara arrived, McNamara told Davis “we” need to talk to you, handcuffed Davis and along with Ringeisen escorted Davis to a 4 x 4 room. RP 18, 54-55. Once in the room, McNamara asked Ringeisen what happened. RP 55. Ringeisen explained that he observed Davis put a flashlight in his waistband and open batteries. RP 18-19, 56-57.

McNamara searched Davis inside the small room while Ringeisen questioned Davis. RP 18-20. Ringeisen explained that he always asks shoplifters questions and can often obtain more information than a police officer, although he does not act on behalf of the police. RP 20-21. Specifically, Ringeisen asks

the reason for them being there was, why they were taking the stuff, all this kind of stuff. And sometimes, because I'm not a police officer when I was doing that job, they would tell me things a lot more than they might tell an officer, because you know, they don't like talking to police. So I just start asking them questions.

RP 20. After Ringeisen questioned Davis while McNamara searched Davis, McNamara issued *Miranda* warnings and asked Davis for his statement. RP 56-58. Davis agreed to speak, but when asked for a statement, said nothing. *Id.* McNamara, then asked Davis if Ringeisen’s

recitation was accurate, to which Davis' said yes except that he did not cut open packages of batteries. RP 56-57.

During the search, McNamara found a pipe with suspected methamphetamine residue. RP 58. Davis informed McNamara that he found the pipe in the Wal-Mart near the bathrooms and did not know that it contained drugs. RP 59, 85-87. When asked at trial, Davis indicated that he could see a little bit of white residue. RP 87-88. McNamara gave the pipe to officer Bailey who performed a field test outside of McNamara's presence. RP 60, 66-67.

Bailey did not testify and McNamara had no control over the pipe after he gave it to Bailey. RP 65-66. The defense objected to admission of the pipe and the methamphetamine from a lab test based on a lack on an adequate chain of custody and hearsay. RP 60-61, 66-67. Ultimately McNamara agreed that as many as three other people could have handled the pipe and he could not account for any of them. RP 65-68.

a. Chain of Custody for Pipe.

Q So once you give the blue pipe to Officer Bailey, have you seen it before today?

A Have I seen it before today? I saw it a couple days ago from our technician.

Rick McNamara

Voir Dire Examination

Q Okay.

A Our evidence technician had it out, and she was explaining it was broken.

Q So you believe you know what the procedure is that that particular piece of evidence traveled through; is that right?

A Right. The normal procedure, yes. Our normal procedure, yes.

Q Okay. And it traveled through at least three other people's hands at a minimum before today, not including yours; is that right?

A That's possible. I don't know how many people are at the lab.

Q That's right. So you don't know how many people had ahold of that?

A At the lab, no.

Q All right. There is a normal procedure that you presume that evidence package went through, but you weren't part or party to any of it, were you?

A You mean directly packaging it, no, I was not.

Q Well, you didn't package it, you didn't submit it, you didn't send it, you didn't test it, you didn't send it back, you didn't a No.

MR. BLAIR: All right. So we would maintain our objection that they have not established chain of custody, your Honor.

RP 65-66.

Is this the same pipe that you took from the defendant's right front pocket?

THE WITNESS: Yes.

THE COURT: When Officer Bailey field tested it, did he do that in your presence?

THE WITNESS: No, sir.

THE COURT: Okay. So that was done before it was packaged, and assuming the protocol was maintained, before it was delivered into the evidence locker at the Chehalis PD?

THE WITNESS: Correct.

THE COURT: Objection to admissibility is overruled.

RP 67-68. The defense stipulated that whatever the crime lab tested was in fact methamphetamine but did not stipulate that the matter tested came from the pipe retrieved from Davis. Ex. 5; RP 95. This timely appeal follows.

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C. ARGUMENTS

1. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO SUPPRESS METHAMPHETAMINE BASED ON AN INADEQUATE CHAIN OF CUSTODY.

The trial court erred in admitting the methamphetamine: exhibit 5. RP 64. “Before a physical object connected with a crime may properly be admitted into evidence, it must be satisfactorily identified and shown to be in substantially the same condition as when the crime was committed.” *State v. Campbell*, 103 Wn.2d 1, 21, 691 P.2d 929 (1984). When the evidence is susceptible to alteration by tampering or contamination, the proponent of the evidence must “establish a chain of custody ‘with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.’” *State v. Roche*, 114

Wn.App. 424, 436, 59 P.3d 682 (2002) (emphasis omitted) (*quoting United States v. Cardenas*, 864 F.2d 1528, 1531 (10th Cir. 1989)).

In assessing the completeness of the chain of custody, the trial court shall consider “the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.” *Campbell*, 103 Wn.2d at 21 (*quoting Gallego v. United States*, 276 F.2d 914, 917 (9th Cir. 1960)). Minor discrepancies in the chain of custody affect the weight of the evidence, not its admissibility. *Campbell*, 103 Wn.2d at 21; *Roche*, 114 Wn.App. at 436. .

Evidence that is unique and readily identifiable may be identified by a witness who can state that the item is what it purports to be. 5 KARL B. TEGLAND, WASH. PRAC. § 402.31 (1999). However, where evidence is not readily identifiable it is customarily identified by the testimony of each custodian in the chain of custody from the time the evidence was acquired. *Id.* This more stringent test requires the proponent to establish a chain of custody “with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.” *Cardenas*, 864 F.2d at 1531.

A trial court's decision to admit evidence is reviewed for abuse of discretion. *State v. Garcia*, 179 Wn.2d 828, 846, 318 P.3d 266 (2014);

Campbell, 103 Wn.2d at 21. A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons. *Garcia*, 179 Wn.2d at 846.

In *Roche*, the police found money, scales and suspected methamphetamine in Roche's office. *Roche*, 114 Wn.App. at 431. The police photographed the evidence and one deputy, Warren, field tested the suspected methamphetamine which returned a positive result. *Roche*, 114 Wn.App. at 432. Both officer Warrant and Thompson testified to the chain of custody. *Id.* The lab technician, Hoover tested the controlled substance and testified that it was methamphetamine. *Id.*

After trial and conviction, Roche filed a motion for a new trial based on newly discovered evidence that the crime lab technician stole heroin on the job. *Roche*, 114 Wn.App. at 433. On this basis, the Court of Appeals granted Roche a new trial holding that because a baggie of powdery substance is not unique, "[t]hat is precisely why a chain of custody must be laid for evidence that is not readily identifiable." *Roche*, 114 Wn.App. at 438. The court also held that the lab technician's "malfeasance" undermined both the chain of custody by stealing samples of drugs obtained in criminal cases, and irreparably undermined his credibility. *Id.* On this basis, the Court of Appeal reversed the conviction.

In *State v. Neal*, 144 Wn.2d 600, 607-08, 610-11, 30 P.3d 1255 (2001), the Deputy was able to testify that he was the person who handled the substance between the Tacoma crime lab and the Skamania evidence vault, but his testimony did not supply the information specifically required by the court rule: the name of the person from whom the tester of the substance received the evidence. *Neal*, 144 Wn.2d at 606.

In *Neal*, in the context of introducing hearsay, the Supreme Court recognized that failure to strictly comply with the rules would create an unintended "catch-all" that would create an unacceptably unpredictable application of the law.

Despite purported safeguards, there is a serious risk that trial judges would differ greatly in applying the elastic standard of equivalent trustworthiness. . . . There would be doubt whether an affirmance of an admission of evidence under the catchall provision amounted to the creation of a new exception with the force of precedent or merely a refusal to rule that the trial court had abused its discretion.

Neal, 144 Wn.2d at 610-11.

The State Supreme Court held that the trial court abused its discretion by admitting the flawed lab certification evidence without the proper foundation and chain of custody. The abuse of discretion was held to be

reversible error. The court reasoned that CrR 6.13(b), an exception to the hearsay rule, only provided for the admission of lab certifications in lieu of live testimony when the rule was strictly complied with. The Supreme Court agreeing with the Court of Appeals affirmed that the lab report and certification have two functions, "furnishing prima facie evidence of both the test results and the chain of evidence custody to and from the testing expert." *Neal*, 144 Wn.2d. at 607. (Citation omitted).

Both *Neal* and *Roche* provide authority for this Court to reverse Davis' possession conviction. During trial, Davis objected to the admission of a methamphetamine pipe and a lab report purportedly derived from methamphetamine for the seized pipe due to an incomplete chain of custody. McNamara retrieved the pipe containing methamphetamine from Davis, and Davis' counsel stipulated that the lab report contained a positive analysis for methamphetamine. RP 66-67; Exhibit 5.

Davis did not stipulate that the methamphetamine in the lab report was from the pipe retrieved from his person. RP 65-67. McNamara was not present when the pipe was filed tested, he was not present when the pipe was packaged for submission into evidence, and he did not send the pipe to the lab. McNamara just assumed that general police procedure was followed in this case. RP 65-67.

The inability to establish an unbroken chain of custody from the initial seizure by McNamara to Bailey, who did not testify, to the crime lab technician who did not testify, cannot be considered a "minor discrepancy". Rather, more egregious than in *Neal*, where only a single person in the chain of custody missing, here there were unknown, multiple missing links from McNamara passing the pipe to Bailey, who may have packaged the pipe and placed it into the evidence locker or not, to some other unidentified person who delivered the evidence to the crime lab, where there was no testimony regarding the chain of evidence at the lab. These missing links so undermine the foundation requirement needed to establish a chain of custody that there is insufficient completeness to permit admission of the evidence. *Neal*, 144 Wn.2d at 610-11; *Roche*, 114 Wn.App. at 436. .

In the instant case both the identification of the methamphetamine and the chain of custody are insufficient to establish the necessary foundation. No one was able to testify to how the pipe was handled after McNamara passed the pipe to Bailey, and although the defense stipulated that the matter tested was methamphetamine, no one testified that it was the matter removed from the pipe taken from Davis. Ex. 5.

To permit the state to avoid both the chain of custody requirement and the identification requirement would eliminate the evidentiary safeguards

designed to protect the accused's right to due process. *Neal*, 144 Wn.2d at 607-08. Admission of the methamphetamine under these circumstances amounted to the type of "catch-all" held **impermissible** in *Neal, supra*.

In the instant case, the trial court abused its discretion by failing to dismiss the case based on an incomplete chain of custody regarding the state's most critical piece of evidence against Davis, which completely undermined the required foundation and trustworthiness for admission into evidence. *Neal*, 144 Wn.2d at 607-08.

When the trial court abuses its discretion, the reviewing court must determine whether the error was harmless or prejudicial. Reversal is required if the error results in prejudice. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). An error is prejudicial if, "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." *Neal*, 144 Wn.2d at 611, (quoting, *State v. Smith*, 106 Wn.2d 772, 780, 725 P.2d 951 (1986)). Improper admission of evidence constitutes harmless error only if the evidence is of minor significance in reference to the evidence as a whole. *Thieu Lenh Nghiem v. State*, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994).

Under this test, the methamphetamine should have been excluded because the State could not prove that it was the matter obtained from the

pipe in Davis' pocket. The state could not have proceeded in its prosecution of Davis on the possession charge without the methamphetamine. Accordingly, this court must remand for dismissal of this charge with prejudice.

2. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT POSSESSION OF METHAMPHETAMINE BECAUSE DAVIS ESTABLISHED THAT HIS POSSESSION OF A PIPE CONTAINING METHAMPHETAMINE WAS UNWITTING.

The State has the burden to prove each element of a charged crime beyond a reasonable doubt. *In re Matter of Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). To convict Davis of the offense of possession of a controlled substance, methamphetamine, the State was required to prove the nature of the substance and possession by the defendant. RCW 69.50.401; RCW 69.50.4013(1); *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994).

“Once the State establishes prima facie evidence of possession, the defendant may, nevertheless, affirmatively assert that his possession of the drug was ‘unwitting.’” *Staley*, 123 Wn.2d at 799. Unwitting possession is an affirmative defense to unlawful possession of a controlled substance. *State v.*

Bradshaw, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004).

“To establish [this] defense, the defendant must prove, by a preponderance of the evidence, that ... her possession of the [controlled] substance was unwitting.” “*State v. Buford*, 93 Wn.App. 149, 152, 967 P.2d 548 (1998) (quoting *State v. Balzer*, 91 Wn.App. 44, 67, 954 P.2d 931 (1998)). If the defendant establishes that “his ‘possession’ was unwitting, then he had no possession for which the law will convict.” *State v. Cleppe*, 96 Wn.2d 373, 381, 635 P.2d 435 (1981); 11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 52.01, at 1007 (3d ed.2008)¹. *Accord*, *State v. Hundley*, 142 Wn.2d 1, 9-10, 11 P.3d 304 (2000) (unwitting possession excuses otherwise criminal conduct)).

To prevail on an unwitting possession defense, the defense must establish some evidence that Davis did not know he possessed methamphetamine or he was not aware the residue contained

¹ 11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 52.01, at 1007 (3d ed.2008) provides:

A person is not guilty of possession of a controlled substance if the possession is unwitting. Possession of a controlled substance is unwitting if a person [did not know that the substance was in [his][her] possession] [or] [did not know the nature of the substance].

The burden is on the defendant to prove by a preponderance of the evidence that the substance was possessed unwittingly. Preponderance of the evidence means you must be persuaded, considering all of the evidence in the case, that it is more probably true than not true.

methamphetamine. *Buford*, 93 Wn.App. at 152. Davis testified that he did not know the residue was methamphetamine. RP 85-87. This was sufficient to establish the defense of unwitting sufficient to defeat the possession charge.

Here, Davis established that when he found the pipe near the restroom in Wal-Mart, he did not know that it contained methamphetamine. RP 85. There was no evidence that Davis knew the pipe contained methamphetamine. This evidence was uncontroverted, and the fact that Davis had the pipe in his pocket did not in any manner establish beyond a reasonable doubt that he knew the pipe contained methamphetamine. Accordingly, Davis' possession was unwitting and this Court must remand for reversal and dismissal with prejudice.

3. THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS DAVIS' STATEMENTS OBTAINED BY A WALMART LOSS PREVENTION OFFICER IN A SMALL ROOM WHILE DAVIS WAS HANDCUFFED AND BEING SEARCHED BY A POLICE OFFICER.

The Fifth Amendment provides that “[n]o person shall ... be compelled in any criminal case to be a witness against himself.” *State v. Lewis*, 130 Wn.2d 700, 704-05, 927 P.2d 235 (1996). The Washington

Constitution, article 1, section 9 states: “no person shall be compelled in any criminal case to give evidence against himself.” *State v. Easter*, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996). Courts interpret the two provisions in the same manner. *Id.*

Miranda warnings were created to protect a defendant’s constitutional right not to make incriminating confessions or admissions to police while in a coercive environment of police custody. *State v. Heritage*, 152 Wn.2d 210, 95 P.3d 345 (2003). *Miranda* warnings must be given when a suspect endures (1) custodial (2) interrogation (3) by an agent of the State. *Heritage*, 152 Wn.2d at 214 (*citing, Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). Without *Miranda* warnings, a suspect’s statements during custodial interrogation are presumed involuntary. *Heritage*, 152 Wn.2d at 214. The issue on appeal in this case related to *Miranda* warnings involve the third requirement: an agent of the state.

b. State Agent Requirement

Historically, under *Miranda*, custodial interrogation means, “questioning initiated by *law enforcement officers* after a person has been ... deprived of his freedom in any significant way.” *Miranda*, 384 U.S. at 444. (Emphasis added). Since, *Miranda*, the United States Supreme Court has expanded the definition and clarified that “law enforcement officers”

encompasses more than just police officers. *Heritage*, 152 Wn.2d at 215 (citing, *Mathis v. United States*, 391 U.S. 1, 88 S.Ct. 1503, 20 L.Ed.2d 381 (1968); *Estelle v. Smith*, 451 U.S. 454, 466, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981).

Before *Estelle*, in 1969, our State Supreme Court held that generally, a loss prevention employee is not a state agent. *State v. Valpredo*, 75 Wn.2d 368, 450 P.2d 979 (1969). In *Valpredo*, store employees observed the defendant stealing merchandise. *Valpredo*, 75 Wn.2d at 369. The employees detained the defendant and informed him of his “*Miranda*” rights, but did not inform him of his right to free legal counsel if indigent. *Valpredo*, 75 Wn.2d at 369. After the warnings were given, the employees obtained incriminating statements that were admitted at trial. The Court in *Valpredo* held that the statements were admissible because the Fifth Amendment and *Miranda* are not applicable when an accused is interrogated by persons who are not officers of the law. *Valpredo*, 75 Wn.2d at 370.

In *Estelle*, the United States Supreme Court held that *Miranda* applies to court ordered psychiatric examinations. *Estelle*, 451 U.S. at 467. The Court explained that when the court ordered psychiatrist testified for the prosecution, his role became that of a state agent. *Estelle*, 451 U.S. at 467.

Our State Supreme Court in *Heritage* relied on these cases to hold

that “*Miranda*, therefore, applies not only to law enforcement officers but to any “agent of the state” who ‘testifie[s] for the prosecution’ regarding the defendant’s custodial statements.” *Heritage*, 152 Wn.2d at 216. *Cf.*, *State v. Warner*, 125 Wn.2d 876, 884, 889 P.2d 479 (1995) (state employed sex offender counselor for group therapy not custodial and lacked the level of compulsion contemplated in *Miranda* to constitute “interrogation.”).

The Court in *Heritage*, applied an objective test to determine if *Miranda* applied to a *defacto* agent of the state based on the belief of a reasonable person in the defendant’s position. *Heritage*, 152 Wn.2d at 217 (*citing*, *State v. O’Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003)).

In *Heritage*, the Court held that city park employees were agents of the state where the employees approached a group in the park; the employees “wore bullet proof vests under t-shirts bearing gold badges containing the words ‘Security Officer’”, and other security paraphernalia. The Court in *Heritage* held that when the security personnel approached the suspects, a “reasonable person in *Heritage*’s position would view such officers to be ‘law enforcement officers’ with authority over him or her.” *Heritage*, 152 Wn.2d at 217. The Court additionally affirmed that *Miranda* was required on the basis that the park employees were also:

acting in their official capacity at the time they confronted the

respondent, that their duties included the investigation or reporting of crimes, and that information elicited during interrogation was used to prosecute Heritage.

Heritage, 152 Wn.2d at 217.

There are many similarities between this case and *Heritage*, and *Valpredo* is factually distinguishable. Although *Valpredo* also involved a loss prevention employee, none of the particularly objective criteria for a state agent existed in that case, whereas in this case those criteria are glaring. For example, in this case, McNamara, informed Davis that he and Ringeisen needed to question him together, thus expressly stating the two were acting in concert. RP 18, 54-55.

Davis was led to a small room with both McNamara and Ringeisen, where McNamara searched Davis while Ringeisen questioned Davis. RP 16-20, 54-55. Before the questioning, within earshot of Davis, Ringeisen explained that he observed Davis put a flashlight in his waistband and open batteries. RP 18-19, 56-57. Even though Ringeisen indicated that he did not ask questions for the police, under an objective inquiry, Ringeisen was a state agent based on the manner in which Ringeisen questioned Davis while Davis was handcuffed and being searched in the tiny room.

In *Valpredo*, the facts were significantly more generic than in this case. Therein a hardware store merchant, a shopkeeper, not a loss prevention

specialist working solely for the purpose of detecting shoplifters, informed Valpredo of his Miranda rights without explaining that Valpredo was entitled to free legal counsel. The Court held that under those circumstances, with a mere merchant questioning a suspect, it was not reasonable to believe that the suspect would have felt compelled to answer “the unskilled inquires of a hardware store merchant. *Valpredo*, 75 Wn.2d at 370-71.

The Court in *Valpredo*, recognized and reiterated that ultimately *Miranda* “is available to protect persons from being compelled to incriminate themselves in all settings in which their freedom of action is curtailed, it is clear that the thrust of the decision was aimed against the ‘potentiality for compulsion’”. *Miranda*, 384 U.S. at 457. The Court in *Valpredo* however concluded that *Miranda* did not apply to the interrogation separate from police in that case. *Valpredo*, 75 Wn.2d at 370-71.

In fact, nothing can justify an interpretation of *Miranda* to a point where its rules would include the interrogation process of an accused by an apprehending shopkeeper not regularly engaged in law enforcement work. To hold otherwise would be to assign an intent to the majority opinion of the case that cannot logically be justified in reason. We decline to do so.

Valpredo, 75 Wn.2d at 370. The facts of this case present the loss prevention officer as an agent of the state, not a mere shopkeeper.

In this case, Ringeisen was not a shopkeeper. He was regularly

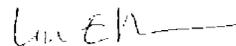
engaged in assisting law enforcement apprehend shoplifter. He interrogated Davis while Davis was in handcuffs being searched by a police officer. A reasonable person would understand that Ringeisen was an agent of the state. *Heritage*, 152 Wn.2d at 217. Ringeisen, identical to the park security in *Heritage*, also testified for the prosecution regarding the defendant's custodial statements. *Heritage*, 152 Wn.2d at 216. Analyzing, the purpose of Miranda to prevent coerced confessions, along with the fact that Ringeisen's sole job was to catch shoplifters, raises Ringeisen to the level of a state agent similar to the city park security in *Heritage*. Accordingly, Davis' confession should have been suppressed.

D. CONCLUSION

Mr. Davis respectfully requests this Court reverse his conviction and remand for suppression and dismissal based on the illegal search and seizure and denial of an impartial jury venire.

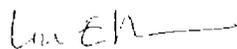
DATED this 26th day of December 2015

Respectfully submitted,



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WSBA No. 20955
Attorney for Appellant

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Case Name: State v. Daivs

Court of Appeals Case Number: 48147-2

Is this a Personal Restraint Petition? Yes No

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Statement of Arrangements

Motion: _____

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Brief: Appellant's

Statement of Additional Authorities

Cost Bill

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Affidavit

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Personal Restraint Petition (PRP)

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Other: _____

Comments:

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