

No. 288021

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

RANDY JAMES JERRED,

Appellant.

BRIEF OF RESPONDENT

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Special Deputy Prosecuting Attorney
Attorney for Respondent

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant has raised five assignments of error. These can be summarized as follows;

- 1.) Appellant was unlawfully arrested.
- 2.) The trial courts findings of fact IX and X do not support the Conclusions of Law.
- 3.) The scope of the search of appellant's person violated his constitutional rights.
- 4.) Conclusion of Law II is erroneous.
- 5.) The Information charging appellant with a crime is insufficient. .

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. Jerred's arrest was legal.
2. The actions of the trial court in denying a motion to suppress were proper, the arrest and search were legal.
3. The information charging Jerred with the crime of Possession of a Controlled Substance was sufficient.

II. STATEMENT OF THE CASE

The facts in this matter have been adequately set forth in appellants brief therefore, pursuant to RAP 10.3(b); the State shall not set forth additional facts. As needed the State shall refer to specific areas of the record.

III. ARGUMENT

ARREST AND SCOPE OF SEARCH

In the trial court Jerred did not challenge his arrest alleging the city code was invalid, he alleged there was an improper contact by the officer. This challenge, for the first time on appeal, to the city code of Yakima should not be allowed. There was never a claim at the trial court level that the wording of the code was such that the arrest was “unlawful.” The allegation by trial counsel was this was a “Terry” stop and that the officer needed individualize suspicion to contact Jerred and therefore the officer had unlawfully seized Jerred.

This court should reject Jerred’s attempt to raise additional issues for the first time on appeal. RAP 2.5(a); State v. Carpenter, 52 Wash.App. 680, 683, 763 P.2d 455 (1988) (holding that an objection has not been reserved for appeal where the objection on appeal is different than the one presented in the trial court).

Appellant does not attempt to challenge the validity of the statute but instead says that his conduct was such that the officer could not have arrested him for the crime enumerated by the city code because his actions did not meet the requirements of that code. It is clear that the meaning of this code is that a person in Jerred’s situation will be in violation of the code if he lies to an officer of the Yakima City police department about his

name, age and place of birth.

Regarding the claim that the statute was “unlawful” Division II of this court stated the following in State v. Kirwin, 137 Wn. App. 387, 153 P.3d 883 (2007);

Police may rely on ordinances as written. State v. Potter, 129 Wash.App. 494, 497, 119 P.3d 877 (2005), *aff'd*, 156 Wash.2d 835, 132 P.3d 1089 (2006). An arrest is not invalid for lack of legal authority simply because the ordinance a defendant is arrested under is later found to be unconstitutional. State v. Pacas, 130 Wash.App. 446, 449, 123 P.3d 130 (2005) (citing State v. White, 97 Wash.2d 92, 102-04, 640 P.2d 1061 (1982)). Rather, the arrest is invalid only if the ordinance is flagrantly unconstitutional on its face. Pacas, 130 Wash.App. at 449, 123 P.3d 130. We see no flagrant unconstitutionality here. Municipal codes often prescribe penalties greater than State law, but we do not find one case in which a court has found that this difference renders the ordinance unconstitutional. *See* City of Spokane v. White, 102 Wash.App. 955, 960-64, 10 P.3d 1095 (2000) (upholding a Spokane domestic assault ordinance, even though the ordinance prohibited a greater range of conduct than the State statute, because the statute did not expressly permit the behavior that Spokane banned and so the laws did not conflict), *review denied*, 143 Wash.2d 1011, 21 P.3d 291 (2001). The arrest was valid, notwithstanding the merits of Kirwin's claim.

City of East Wenatchee v. Douglas County, 156 Wn. App. 523, 527, 233 P.3d 910 (2010):

In statutory interpretation, the court looks first to the plain meaning of the statute. If the statute is unambiguous, the court looks no further and applies the statute as stated. Bercier v. Kiga, 127 Wash.App. 809, 815-16, 103 P.3d 232 (2004). If the literal reading of the

statute results in unlikely, absurd or strained consequences, the purpose of the statute should prevail over the express but inept wording. *Whatcom County*, 128 Wash.2d at 546, 909 P.2d 1303. The court should determine legislative intent within the context of the entire statute and should interpret the statute so that no portion is rendered meaningless or superfluous. *Id.*

Jerred has failed to address the fact that this is being raised for the first time on appeal. He does not indicate any legal basis to allow this. He fails to indicate how under RAP 2.5 this allegation should even be addressed;

RAP 2.5 (a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

Appellant states “Jerred was being contacted as a potential witness. No safety concerns were immediately identified.” This is contradicted by the testimony of Officer Cavin:

A Not -- not clearly, but what I was able to see was that there was a male who was laying down in the back seat. Again, as I stated before, it's a two-door vehicle, it's a passenger car, not a lot of room back there, and the male was lying down in a position below the window line of the seat -- the seats -- or the window view below the window break laying down with his hands clutched to his chest almost in this type of a fashion. I can't really describe that, but.

Q And so when you see him lying down there does that concern you?

A It does.

Q Why is that?

A Well, I don't know anything about what this case is going to uncover or involve, but at that particular point I did not have a clear view of him. He's acting furtively as if he's hiding from me inside the vehicle. There's -- this particular vehicle also contained a large amount of electronics, other property. There were boxes and bags piled in the vehicle obscuring my view, and at that point I was concerned that the male may possibly have a weapon or some other type of item that he would be trying to conceal from my view in that particular position. I didn't have a safe way to contact him in that particular position.

...

Q And when you see him, as you've described, laying down as you approached the vehicle, what did you do at that point?

A At that point I shined my flashlight on him. Again, as I said before, the seats folded back. It's -- I don't have a very clear view of that, I wasn't comfortable contacting him in that position or making contact with him in that position for my safety. I opened the door, asked him to exit the vehicle so I could safely contact him.

...

A At that point, as I said, I wasn't -- at this point I've identified at least two individuals that are involved in this theft activity. He's seated in a vehicle I had just seen the male that I know was identified as being mal and theft activity coming from; he's a third potential involved party at this point based on my training and experience in law enforcement and retail theft investigation.

...

Q And did you ever ask him for identification before asking his name?

A Yes.

Q Why did you do that?

A For the purpose of identifying him for the investigation for my report and whether or not he might be involved in that activity.

Q And you're referring to what activity?

A The theft activity that I'd already -- we'd already begun investigating with Officer Bowersox initially. (RP 15-17)

The Commissioner who previously reviewed this appeal was concerned with the scope of the search. The Commissioner indicated there was only one question not so controlled by settled law as to support granting the motion on the merits. The Commissioner expressed concern that the scope of the search exceeded the general authority to search incident to arrest. The Commissioner couched the question in inevitable discovery terminology.

It is the position of the State that there is no need to address inevitable discovery. The facts are clear. Jerred lied to the officer which allowed a valid arrest under the Yakima City code. After this valid arrest the officer then had the legal ability and authority to search Jerred incident to that arrest. The Officer then determined the true identity of Jerred and found there were existing valid warrants for his arrest. At that point the Officer would not have the ability to cite and release, Jerred, he was going to go to jail. Therefore with both of these separate and valid arrests as

basis for a search incident to arrest the Officer could, and did, search the person of Jerred. This search resulted in the Officer finding the drugs in a cigarette package. As was indicated in State v. Gammon, 61 Wn. App. 858, 862-3, 812 P.2d 885 (1991).

In White, the defendant had been arrested for drunken driving; and, while being searched following the arrest, a plastic cosmetics case was discovered. This case was opened and cocaine and a razor blade were discovered. The Court of Appeals found that the fact of the arrest itself results in a diminished expectation of privacy in personal possessions associated with the arrested person's clothing. 44 Wn. App. at 278-79. The court reasoned that purses, briefcases and luggage have a greater expectation of privacy than a wallet or a cigarette package. This is because purses, briefcases and luggage are items within the arrestee's immediate control, whereas a wallet and a cigarette package are items that are actually found on the arrestee or are closely associated with the arrestee's clothing. 44 Wn. App. at 278-79. As a result of this diminished expectation of privacy, these objects are subject to inspection if it appears that they may contain contraband or potentially dangerous weapons. 44 Wn. App. at 279-80.

In State v. LaTourette, supra, this court reversed a trial court's ruling suppressing evidence seized in the course of a search incident to an arrest. In LaTourette, the defendant was arrested for reckless driving. After the arrest, the defendant was searched and, in his pants pocket, a plastic baggie containing cocaine was discovered. This court held that the search was lawful because it was a reasonable search of a suspect incident to a lawful arrest. 49 Wn. App. at 127-28 (citing State v. McIntosh, 42 Wn. App. 573, 712 P.2d 319, review denied, 105 Wn.2d 1015 (1986)). /1 Judge Swanson also noted the diminished expectation of privacy that accompanies an arrest and stated that the warrantless

search of the defendant, including his pants pocket, was reasonable. 49 Wn. App. at 128-29 (citing State v. White, supra).

1 In McIntosh, the defendant was patted down after being lawfully arrested. Jewelry was discovered in his pants pockets. This court held that the search was lawful, reasoning:

A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, . . .42 Wn. App. at 578 (quoting United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)).

Jerred cites State v. Neth, 165 Wn. 2d 177, 196 P.3d 658 (2008), Neth is distinguishable. In this case it had been established that a crime had occurred. In Neth the officers further actions were in an attempt to investigate whether a crime had been committed. Here the officer states categorically that he knows from his background and training that often this type of crime, shoplifting, is engaged in by numerous persons acting together. That it was possible that Jerred was “involved.” He does not state that Jerred was a witness to the actions of the other but that he was “involved” with the others who had been identified by the employees of Wal-Mart as having committed an actual crime.

This officer stated a particularized belief that Jerred was or possibly was involved with a crime which the officer was actively investigating.

The officer had just responded to a call there was a crime that had been committed and that the parties involved were still present. The officers were having problems with the suspects that they knew of and they then subsequently learned that Jerred was hiding in the vehicle from which one of the suspects, who had become very hostile, had been seen entering and exiting. There is no other description for the actions of Jerred inside the car but “hiding’ and “furtive.” The other male arrested at the scene was aggressive, threatening and when taken into custody and searched was found to be in possession of a razor blade knife. The officers were informed that there was a third party, Jerred hiding in the car. (CP 34-42)

This was a fluid situation where it was confirmed that the first two suspects were together, the female had admitted to a theft. This was an ongoing investigation of a crime that had occurred and the officers had identified this third suspect, Jerred. They do not ever describe him in the reports submitted to the court as a witness and in his testimony Officer Cavin says on more than one occasion that it was his belief that Jerred may have been involved. Couple this with Jerred hiding in the backseat

of a car, furtive movements with his hands and the time of day it is clear the officers had a well founded articulable set of facts that allowed them to make further contact with Jerred.

Jerred then supplied them with information that the officers would be able to confirm his identity out of Texas, which they attempted to do on more than one occasion. After this turned up nothing he was then arrested under the Yakima City code. CP (34-42) (RP 18-19)

State v. Cormier, 100 Wn. App. 457, 461, 463-4, 997 P.2d 950

(2000):

The basis for the stop here was officer safety. Police may stop a person and frisk for weapons if: (1) the initial stop was justified, (2) a reasonable safety concern exists to justify the frisk, and (3) the scope of the frisk is limited to address their concerns.

The officer must point to specific and articulable facts which, coupled with rational inferences, create an objectively reasonable belief or well founded suspicion that the person is a safety risk. We consider the totality of the circumstances surrounding the stop, including the officer's training and experience, the location of the suspect-officer contact, the time of day, the suspect's conduct and response to the officer, and any other circumstances.

...

The next question is whether any evidence seized pursuant to the now valid arrest for assault is admissible despite the illegality of the original stop. And we conclude that it is. If the arrest is legal, and this one is, then the officer has the right to search incident to that arrest.

Police discovered the drugs in Mr. Cormier's shirt pocket during a search at the jail. The discovery of the

drugs followed a search incident to a valid arrest. State v. Gammon, 61 Wash.App. 858, 863-64, 812 P.2d 885 (1991). Police could also inventory Mr. Cormier's possessions. State v. Smith, 76 Wash.App. 9, 13-14, 882 P.2d 190 (1994). (Some citations omitted.)

The actions of the officers were based initially on the report that a crime had been observed. The Officers were informed that Jerred was hiding in a car from which the identified criminal actors had recently exited. The officers states that Jerred was hiding and making furtive actions, all combined to make him concerned for his safety and the safety of those around him. The act of requesting Jerred to exit the car was valid. The request for identification was valid. The lies told by Jerred fit the Yakima City code and when the officer's suspicions rose to the level of probable cause he arrested Jerred. Thereafter he was able to confirm the true identity of Jerred and the valid warrants were located. The entirety of the actions of the officers was reasonable and supported by the facts and the law.

This court must also carefully consider the documents submitted to the court at the time of the stipulated facts trial, CP 21-24. The testimony of the Officer as well as the report make it clear that the officer spoke with Jerred but did not "pat him down" which he could have done. This officer was attempting to minimize his actions with regard to Jerred. He specifically asked for information to identify Jerred. Jerred gave him

information that he had an “ID card” that was out of the Texas. The officer then attempt to confirm this information and dispatch “found no such record.” It was after this attempt the officer arrested Jerred and from this valid arrest flowed the finding of the real identification from the pocket of Jerred and the subsequent determination there were valid warrants. (CP 21-23, RP 16- 20)

This series of action by the officer were clearly legal based on the facts he was presented with. The actions of the officer stepped up in intrusiveness based on the lies told to him by appellant. The arrest for violation of the Yakima City code was not “unlawful.”

INFORMATION

Appellant, for the first time on appeal challenges the sufficiency of the Information. He claims now claims that “omission” of the word “unlawful” relieved the State of its burden to prove the mens rea of this crime.

State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000):

Every material element of the charge, along with all essential supporting facts, must be put forth with clarity. CrR 2.1(a)(1); State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991).

It is a well-settled rule that a charging document satisfies these constitutional principles only if it states all the essential elements of the crime charged, both statutory and nonstatutory. Kjorsvik, 117 Wn.2d at 97;

State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995).

Court rule CrR 2.1 -- THE INDICTMENT AND

THE INFORMATION:

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) Nature. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. **Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.**

...

(d) Amendment. The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

The State must set forth in the charging document the specific elements of the crime, State v. Vangerpen, 125 Wn.2d 782, 787-88, 888 P.2d 1177 (1995):

We have repeatedly and recently insisted that a charging document is constitutionally adequate only if all essential elements of a crime, statutory and nonstatutory, are included in the document so as to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense. This "essential elements rule" has long been settled law in Washington and is based on the federal and state constitutions and on court rule. Merely citing to the proper statute and naming the offense is insufficient to charge a crime unless the name of the offense apprises the defendant of all of the essential elements of the crime. Error in a numerical statutory citation is not reversible error unless it prejudiced the accused. /8

8 Former CrR 2.1(b); now CrR 2.1(a)(1).

(Some footnotes omitted, emphasis mine.)

State v. Clausing, 147 Wn.2d 620, 56 P.3d 550 (2002) is distinguishable. Clausing discusses instructional error not an alleged failure in the charging document. Clausing addressed the ability of “a defrocked osteopathic physician(s)” legal ability to prescribe a legend drug. Further, it is not possible to possess methamphetamine by any manner or means. Here the Jerred stood mute until now after he agreed to a stipulated facts trial so that he could take up on appeal the sole issue of the legality of the initial search.

There was no prejudice to Jerred. In the information it cites to the correct statute, that he was in possession of a controlled substance, methamphetamine and indicates the specific RCW, it includes the date and the fact that it occurred within the State of Washington. Jerred stipulated

to the report from the crime laboratory which indicated this was methamphetamine a controlled substance, he stipulated to a set of reports to be considered by the court, he stipulated to the findings of fact and conclusions of law (which he too now challenges) and he stood there apparently through a first appearance, an arraignment, a CrR 3.6 hearing and a stipulated facts trial and now claims he was somehow prejudiced by this documents alleged failings.

It is only now for the first time on appeal that he alleges this “error” has is such that it should result in his conviction being dismissed with prejudice.

State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1985):

In *State v. Bonds*, supra, this court distinguished between a constitutionally defective information and one which is merely deficient due to vagueness as to some other matter. The omission of any statutory element of a crime in the charging document is a constitutional defect which may result in dismissal of the criminal charges. *Bonds*, at 16; see also *In re Richard*, 75 Wn.2d 208, 449 P.2d 809 (1969); *Seattle v. Morrow*, 45 Wn.2d 27, 273 P.2d 238 (1954); *Seattle v. Jordan*, 134 Wash. 30, 235 P. 6 (1925). Conversely, if the information states each statutory element of a crime, but is vague as to some other matter significant to the defense, a bill of particulars is capable of correcting that defect. In that event, a defendant is not entitled to challenge the information on appeal if he failed to request the bill of particulars at an earlier time. *State v. Bonds*, supra; see also *In re Richard*, supra;

State v. Johnson, 100 Wn.2d 607, 674 P.2d 145 (1983).

Even using the standard set forth in State v. Johnson, 119 Wn.2d 143, 888 P.2d 1177 (1995) this information would pass muster. It contains all of the elements the State was required to prove beyond a reasonable doubt and as well as informing the defendant of the maximum penalty. As was aptly stated in State v. Solomon, 73 Wn. App. 724, 728, 870 P.2d 1019 (1994) “Rather, in a possession case, it is clear that a crime occurred if drugs are in the possession of someone...”

The information mirrors WPIC 50.02 Possession of Controlled Substance—Elements

To convict the defendant of the crime of possession of a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt: (1) That on or about _____, the defendant possessed [*a controlled substance*] [_____]; and (2) That this act occurred in the State of Washington. If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Further, this court can decline to address this issue in that appellant has not supplied the court with a record sufficient to allow complete and full review. It is the duty of the appellant to include all needed transcript

when challenging the actions of the trial court. Jerred has not presented this court with a record upon which a determination may be made. The only citations to the record are to the actual charging document but hearings such as arraignment on those charges are not before this court. There were in all likelihood at least two other appearances where the information was specifically read to Jerred with, apparently, not a word uttered.

RAP 9.2 VERBATIM REPORT OF PROCEEDINGS:

(b) Content. A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review....
If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding

The actual document being challenged is a portion of the record before this court. However, any and all of the action taken in conjunction with that information at the time of arraignment, first appearance and/or any subsequent hearings is not before this court therefore this court should refuse to consider this allegation. State v. Garcia, 45 Wn. App. 132, 724 P.2d 412 (1986), “[a] party seeking review has the burden of perfecting the record so that the appellate court has before it all the evidence relevant to the issue. State v. Jackson, 6 Wn. App. 510, 516, 676 P.2d 517, aff’d,

102 Wn.2d 689, 689 P.2d 76 (1984).”

State v. Alexander, 70 Wn. App. 608, 611-12, 854 P.2d 1105

(1993):

...the State has not provided a transcript of the trial which was the basis for the trial court's factual findings.

A party should arrange for the transcription of only those portions of the verbatim report of proceedings necessary to present the issues raised on review. If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding.

RAP 9.2(b).

The "evidence relevant" to the disputed findings of fact would be found in the verbatim report of proceedings of the trial and sentencing proceedings. The State has failed to comply with RAP 9.2(b) by failing to provide those relevant parts of the trial record. "The appellant has the burden of perfecting the record so that the court has before it all the evidence relevant to the issue." In re Marriage of Haugh, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990). Accordingly, we accept the findings as verities on appeal. (Footnote omitted.)

A claim of error may be raised for the first time on appeal if it is a 'manifest error affecting a constitutional right.' RAP 2.5(a)(3). Even if this alleged error was constitutional, this court need only examine the alleged errors effect on the defendant's trial using the harmless error standard. State v. Scott, 110 Wn.2d 682, 688, 757 P.2d 492 (1988). If this court considered this alleged error constitutional in nature it would be harmless because the evidence was overwhelming. This court could

easily find that it was 'convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error {.'} State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996).

The method by which this alleged error has been challenged is a case of “invited error.” There are few cases where this is as clear. Washington case law lists numerous situation were the parties’ action were such that they “invited” the error. As indicated above Jerred agreed to all of the documents used to allow the trial court to find him guilty, it is only now on appeal he claims he was harmed by this alleged omission in the Information.

State v. Armstrong, 69 Wn. App. 430, 435, 848 P. 2d 1322

(1992):

We hold, therefore, that when a defendant in the procedural setting of a criminal trial makes a tactical choice in pursuit of some real or hoped for advantage, he may not later urge his own action as a ground for reversing his conviction even though he may have acted to deprive himself of some constitutional right. A criminal defendant is entitled to a fair trial from the state, including due process. He is not denied due process by the state when such denial results from his own act, nor may the state be required to protect him from himself. The rule against granting appellate relief to a party for an error he invited in the trial court has a salutary purpose. The error Armstrong now complains of on appeal was invited by Armstrong. No worthy purpose would be advanced by applying the rule of invited error only where the record

contains a showing that the trial court's error was actually caused by the invitation of the appellant. Some trial judges make a point of explaining reasons for their rulings, but many do not.

IV. CONCLUSION

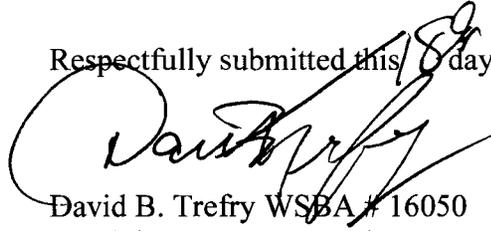
This appeal has no merit. Jerred has shown no error. This challenge of the statute, the findings should be denied. Jerred did not raise these matters in a timely fashion. None of them are of the nature to allow them to be raised for the first time before this court. The officers had a well found articulable set of facts before them which allowed them to legally contact Jerred and take steps to identify him. When it became obvious that he was supplying them with false information they then had a legal basis to arrest him. The subsequent search resulted in the officers finding out the true identity of Jerred and that there were outstanding warrants for his arrest. They therefore had a legal basis for a full search of the person of the appellant to include the cigarette package within which the drugs were found.

The charging document was sufficient. There is no basis to allow this issue to proceed.

The assignments of error raised in this appeal were factual in nature, well within the trial courts discretion, or clearly controlled by

settled law. The actions of the trial court should be upheld this appeal should be dismissed.

Respectfully submitted this 18th day of March 2011

A handwritten signature in black ink, appearing to read "David B. Trefry", written over the date in the text above.

David B. Trefry WSBA # 16050
Special Deputy Prosecuting Attorney