

**FILED**

OCT 17, 2012

Court of Appeals

Division III

State of Washington

NO. 30757-3-III

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

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STATE OF WASHINGTON,

Respondent,

v.

CARL D. JOHNSON,

Appellant.

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

The Honorable T.W. Small, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it refused to suppress unlawfully seized evidence.

2. The trial court erred, in its written CrR 3.6 findings and conclusions, when it entered that portion of disputed fact 4 that states, "Detective Mathena told Mr. Johnson that based upon Mr. Johnson's statement that there was marijuana in the truck, that Detective Mathena could seek a search warrant to search the vehicle."<sup>1</sup>

3. The trial court erred when it entered "conclusion as to disputed fact" 7, in which it found a voluntary consent to search.

4. The trial court erred when it entered conclusions of law 1 through 4.

Issues Pertaining to Assignments of Error

1. An individual is seized if, under the circumstances, a reasonable person would not feel free to leave or otherwise terminate the encounter with police. In this case, appellant had just arrived at a location with a large police presence, was approached by multiple police officers, and twice asked to explain what he was

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<sup>1</sup> The court's written findings and conclusions are attached to this brief as an appendix.

doing on the premises. He was then asked if he was in possession of any drugs. Would a reasonable person have felt free to simply drive away by the time officers questioned him about the crime of drug possession?

2. Appellant consented to the search of his car, during which police found evidence of methamphetamine possession. Did the unlawful seizure immediately preceding appellant's consent taint that consent?

3. Even if appellant was not unlawfully seized, did the State fail to prove a voluntary consent to search?

4. Are several of the court's findings and conclusions contrary to the evidence and applicable law?

B. STATEMENT OF THE CASE

1. Procedural Facts

The Chelan County Prosecutor's Office charged Carl Johnson with one count of possession of a controlled substance: methamphetamine. CP 1-2.

Johnson moved to suppress all evidence of the methamphetamine, arguing it was the product of an unlawful seizure that tainted his subsequent consent to search. CP 3-14. The motion was denied. CP 24-30. In a motion for

reconsideration, Johnson argued that even if there was not an unlawful seizure, the State had failed to demonstrate a voluntary consent to search. CP 16-23. That motion also was denied. CP 34-35.

In light of the court's rulings, Johnson waived his right to a jury trial and proceeded by way of a bench trial on stipulated facts. 3RP<sup>2</sup> 3-6. The Honorable T.W. Small found him guilty, imposed a standard range 8-month sentence, and authorized work release. 3RP 7; CP 38-39. Johnson timely filed his Notice of Appeal. CP 47-67.

## 2. Evidence From the CrR 3.6 Hearing

Two witnesses testified at the CrR 3.6 hearing: Chelan County Sheriff's Detective Josh Mathena and Johnson. 1RP 5, 36. For the most part, the court's written findings and conclusions accurately set forth the facts as found by the court and established by the evidence.

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<sup>2</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – December 29, 2011; 2RP – March 1, 2012; 3RP – March 21 and 28, 2012.

On July 21, 2011, the regional SWAT team executed a search warrant at the Wenatchee home of Michael and Richelle Metcalfe based on the suspected sale of narcotics from the residence. CP 25. Detective Mathena, a member of the Columbia River Drug Task Force, assisted in the operation by watching the perimeter of the property. CP 25. He was armed and wearing a vest and badge that clearly identified him as a police officer. 1RP 8, 35.

During execution of the warrant, Johnson – unaware of the ongoing operation – drove his truck onto the property, parking away from the home and near a separate shop area. CP 25. Several SWAT team members approached Johnson's vehicle and inquired about his business on the property. Johnson explained that he was there to speak to the owners about possible work in connection with their orchard. Officers told Johnson he was "cleared and free to leave," but Johnson wanted to stay and speak to the owners. CP 25-26.

Although Johnson had just been "cleared," Detective Mathena, who recognized Johnson from prior contacts and had information he was a methamphetamine user, approached him and once again asked why he was at the residence. CP 26. When

Johnson indicated he was there on business, Mathena asked if he had any drugs in the vehicle. Johnson said he was not sure; he might have a small amount of marijuana somewhere in his truck. CP 26, 28. Mathena asked if he had any methamphetamine and Johnson replied he might have a pipe in the truck. CP 26-27.

Detective Mathena had Johnson step out of the truck. He then asked for permission to search the truck and read Johnson Ferrier<sup>3</sup> warnings. CP 27. Johnson asked if he was required to give permission, and Mathena indicated he was not. But Mathena added that, based on Johnson's statement there might be marijuana and a pipe in the truck, he felt that he had enough probable cause to obtain a search warrant. RP 33, 44-45. He also may have mentioned bringing a drug-sniffing dog to the scene, although Mathena could not recall for certain. CP 28; 1RP 12, 44-45. Johnson agreed to the search, and Detective Mathena found methamphetamine. CP 26-27.

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<sup>3</sup> State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998). According to Detective Mathena, he informed Johnson that he did not have to allow the search, he could stop the search at any time, and he could also limit the scope of the search. 1RP 32.

Judge Small found that Detective Mathena's contact with Johnson was voluntary, it ripened into a legitimate Terry<sup>4</sup> stop once Johnson admitted to the possibility of marijuana in his possession, and Johnson's subsequent consent to the search was voluntarily given. CP 29; 1RP 65-67; 2RP 9-12.

Johnson now appeals.

C. ARGUMENT

THE COURT WAS REQUIRED TO SUPPRESS ALL EVIDENCE STEMMING FROM THE UNLAWFUL SEIZURE.

Under the Fourth Amendment to the United States Constitution and article 1, § 7 of the Washington Constitution, a warrantless search or seizure is per se unreasonable unless the State demonstrates – by clear and convincing evidence – the search or seizure falls within one of the "jealously and carefully drawn exceptions" to the warrant requirement. State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009); State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979)).

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<sup>4</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

Whether a person has been seized is a mixed question of law and fact. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996), overruled on other grounds, State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). “The resolution by a trial court of differing accounts of the circumstances surrounding the encounter are factual findings entitled to great deference,’ but ‘the ultimate determination of whether facts constitute a seizure is one of law and is reviewed de novo.” State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997) (quoting Thorn, 129 Wn.2d at 351).

A person is seized under article 1, section 7 "when, by means of physical force or a show of authority, his or her freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave, given all the circumstances, or (2) free to otherwise decline an officer's request and terminate the encounter." O'Neill, 148 Wn.2d at 574 (internal quotations and citations omitted). Unlike the Fourth Amendment, this is a purely objective standard, focusing on whether a reasonable person would feel he or she is being detained. The defendant bears the burden to demonstrate an unlawful seizure. State v. Harrington, 167 Wn.2d 656, 663-664, 222 P.3d 92 (2009).

In Johnson's case, although he was not seized when initially approached by SWAT officers, asked his business on the property, and "cleared," he was seized thereafter when Detective Mathena approached him immediately and began questioning him further. There was a progressive intrusion, resulting in a seizure – if not by the time Detective Mathena questioned him about his business on the property – certainly by the time Mathena asked Johnson whether he was in possession of any drugs.

The circumstances of the seizure here are indistinguishable in any meaningful way from those in State v. Soto-Garcia, 68 Wn. App. 20, 841 P.2d 1271 (1992). Kelso Police Officer Kevin Tate observed Soto-Garcia walking out of an alley and decided to speak with him, pulling his patrol car to the side of the road. Soto-Garcia voluntarily walked over to Tate, who asked him where he was going. Tate then asked for Soto-Garcia's name, and Soto-Garcia produced his driver's license. Tate ran a warrants check in Soto-Garcia's presence. Id. at 22. Although the check revealed no outstanding warrants, Tate asked Soto-Garcia if he had any cocaine on him. Id. at 22, 25. Soto-Garcia said he did not. Despite this denial, Tate asked if he could conduct a search and

Soto-Garcia consented. Tate found cocaine in Soto-Garcia's shirt pocket. Id. at 22.

Division Two held that “[t]he atmosphere created by Tate’s progressive intrusion into Soto-Garcia’s privacy was of such a nature that a reasonable person would not believe that he or she was free to end the encounter.” Id. at 25. While the initial contact, questions regarding Soto-Garcia’s intended destination, and request for identification did not qualify as a seizure, a reasonable person would not have felt free to simply walk away once Tate directly asked whether Soto-Garcia had any cocaine on his person. Id.; see also State v. Harrington, 167 Wn.2d 656, 668, 222 P.3d 92 (2009) (“[Soto-Garcia] persuades us that a series of police actions may meet constitutional muster when each action is viewed individually, but may nevertheless constitute an unlawful search or seizure when the actions are viewed cumulatively.”).

Similarly, Johnson’s case involves a progressive intrusion that turned into a warrantless seizure. Nothing prevented Detective Mathena from approaching Johnson and speaking with him. See State v. Aranguren, 42 Wn. App. 452, 455, 711 P.2d 1096 (1985) (approaching and asking questions not a seizure if reasonable person would have felt free to leave). But he did so after other

SWAT officers had already questioned him regarding his business on the property and declared him “clear.” Such actions would indicate to a reasonable person that he was not, in fact, clear to simply do as he pleased. And this was certainly true once Mathena asked Johnson directly if he was in possession of any drugs, a question that clearly signaled he was now the subject of a criminal investigation.

While the progression of events in this case is not identical to those in Soto-Garcia, i.e., Johnson was not asked to produce identification because Mathena already knew him and it is unknown if Mathena ran Johnson’s name for warrants, in some respects the situation here was more suggestive of a seizure. Whereas Soto-Garcia involved only one police officer, there were multiple officers nearby when Mathena approached Johnson and spoke with him. 1RP 10, 13-14, 29, 41. See Harrington, 167 Wn.2d at 664, 666, 669 (presence of more than one officer contributes to seizure). Moreover, unlike Soto-Garcia, Johnson was twice questioned about his purpose on the property. Because no reasonable person would have felt free to simply end such an encounter and drive off, Judge Small erred when he found Johnson was not seized at this point.

The question then becomes whether this seizure fell within one of the narrow exceptions to the warrant requirement. One of those exceptions is the "Terry investigatory stop," discussed in detail in Terry v. Ohio. During a Terry stop, an "officer may briefly detain and question a person reasonably suspected of criminal activity." State v. Watkins, 76 Wn. App. 726, 729, 887 P.2d 492 (1995) (quoting State v. Rice, 59 Wn. App. 23, 26, 795 P.2d 739 (1990)). To justify a Terry stop, an officer must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." State v. Williams, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984) (quoting Terry, 392 U.S. at 21). Specific and articulable facts means evidence demonstrating "a substantial possibility that criminal conduct has occurred or is about to occur." State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

The State failed to establish that Detective Mathena had reasonable suspicion Johnson was engaged in criminal activity at the moment he was seized (when Mathena asked Johnson if had any drugs). Reasonable suspicion was not established until Johnson subsequently indicated that there might be marijuana in the truck. An unlawful seizure, however, cannot be justified by the

fruits of that seizure. State v. McKenna, 91 Wn. App. 554, 560, 958 P.2d 1017 (1998) (citing Smith v. Ohio, 494 U.S. 541, 543, 110 S. Ct. 1288, 108 L. Ed. 2d 464 (1990)).

Because Johnson was unlawfully seized without reasonable suspicion of criminal activity, the issue then becomes the effect of that seizure on his subsequent consent to search.

Temporarily assuming for the sake of argument that Johnson's subsequent consent to search was voluntarily given, the Soto-Garcia court addressed the impact of a post-seizure voluntary consent to search. Soto-Garcia, 68 Wn. App. at 26. Recognizing that even an otherwise valid consent to search becomes invalid if it is the product of a prior illegality, the court listed several relevant factors in determining whether the consent to search is tainted by a prior unlawful seizure:

(1) temporal proximity to the illegality and the subsequent consent, (2) the presence of significant intervening circumstances, (3) the purpose and flagrancy of the official misconduct, and (4) the giving of *Miranda* warnings.

Id. at 27 (citing Taylor v. Alabama, 457 U.S. 687, 690, 102 S. Ct. 2664, 73 L. Ed. 2d 314 (1982)).

Noting that Soto-Garcia was never told he could withhold consent to search, there was no evidence he had committed a

crime prior to the search, and there was no Miranda advisement prior to the search, the court concluded Soto-Gonzalez's consent was obtained through exploitation of the immediately preceding seizure. Therefore, all resulting evidence had to be suppressed. Soto-Garcia, 68 Wn. App. at 28-29; see also Harrington, 167 Wn.2d at 670 (where "consent to the search was obtained through exploitation of a prior illegal seizure, suppression of the evidence is required.").

This Court should also find that the unlawful seizure tainted Johnson's subsequent consent to search. The unlawful seizure and consent occurred very close in time and there were no significant intervening events. While Detective Mathena did provide some version of the Ferrier warnings and informed Johnson he was not required to consent, which weigh against taint, he did not inform Johnson of his Miranda rights until after the search.<sup>5</sup> 1RP 33, 43-44. Moreover, Mathena undermined his statement that Johnson was not required to consent when he subsequently informed him that that he felt he had sufficient

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<sup>5</sup> While Ferrier rights inform a suspect he need not consent to a search, Miranda rights go much farther and inform the suspect – among other things – that he need not even speak with officers should that be his preference. See Miranda, 384 U.S. at 467-472.

probable cause to obtain a warrant and possibly informed him that he could summon a canine to search for drugs. 1RP 12, 33, 44-45.

On this latter point, a police officer's advisement that he has the authority to search in the absent of the defendant's consent may vitiate any consent ultimately obtained. O'Neill, 148 Wn.2d at 590. Specifically, where an officer indicates he has authority to search without consent, this is akin to indicating the defendant has no right to refuse. Id. at 589-590 (citing Bumper v. North Carolina, 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968)). On the other hand, informing the defendant that if he refuses consent the officer will have to get a warrant is simply a relevant factor in assessing voluntariness and does not automatically vitiate consent. Id. at 5990 (citing Commonwealth v. Mack, 568 Pa. 329, 796 A.2d 967 (2002)); see also State v. Smith, 115 Wn.2d 775, 790, 801 P.2d 975 (1990) (merely informing suspect a warrant would be requested did not coerce consent).

Detective Mathena shared with Johnson his professional opinion that, based on Johnson's statements about marijuana and a pipe, he had enough probable cause to obtain a search warrant. RP 33, 44-45. This goes beyond merely informing a suspect that if

he refuses consent, the officer will have to get a warrant.<sup>6</sup> With or without the additional statement about the canine, this detracted from Mathena's earlier statement that Johnson need not consent and also weighs in favor of taint.

Finally, even if Johnson was not seized prior to his consent to search, the State was still required to prove a knowing, intelligent, and voluntary consent. It failed to do so. The factors this Court considers in determining whether consent was voluntary are similar in some respects to those used in deciding if an unlawful seizure tainted a subsequent consent.

Under the Fourth Amendment, it is the State's burden to demonstrate, under the totality of the circumstances, a valid consent by clear and convincing evidence. State v. Bustamante-Davila, 138 Wn.2d 964, 981, 983 P.2d 590 (1999); Ferrier, 136 Wn.2d at 116. Those circumstances include (1) whether Miranda warnings had been given prior to obtaining consent; (2) the degree of education and intelligence of the consenting person; and (3) whether the consenting person had been advised of his right not to

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<sup>6</sup> Disputed fact 4, which suggests that Mathena merely informed Johnson that he "could seek a search warrant" is inaccurate. See CP 27. Mathena expressed an opinion on his ability to obtain a warrant.

consent. State v. Shoemaker, 85 Wn.2d 207, 212, 533 P.2d 123 (1975)).

Regarding factor (1), Johnson had not been informed of his Miranda rights. Regarding factor (2), the State presented no evidence concerning Johnson's degree of education and intelligence. Lastly, regarding factor (3), as just discussed, although the Ferrier-based warning advised Johnson he did not have to consent, that advisement was followed by Detective Mathena's statement that he believed he could obtain a warrant. Based on the totality of the circumstances, the State failed to prove a voluntary consent to search the truck.

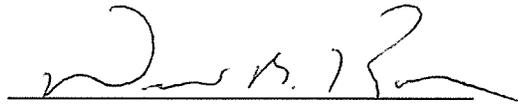
D. CONCLUSION

Johnson was unlawfully seized without a warrant. That seizure tainted his subsequent consent to search. Even if there was no unlawful seizure, the State failed to prove a voluntary consent. All evidence of Johnson's methamphetamine possession must be suppressed.

DATED this 17<sup>th</sup> day of October, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "D. B. Koch", written over a horizontal line.

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## **APPENDIX**

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

STATE OF WASHINGTON, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CARL D. JOHNSON, )  
 )  
Defendant. )  
 )

No. 11-1-00322-2

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
RE CrR 3.6 HEARING

THE ABOVE-ENTITLED MATTER having come before the court on December 29, 2011, for a CrR 3.6 hearing; the defendant having been personally present and represented by his attorney, Bradley Drury of Counsel for Defense of Chelan County; the State having been represented by Gary A. Riesen, Chelan County Prosecuting Attorney; the court having heard the testimony of Detective Josh Mathena and the defendant, Carl Johnson; and having considered the memorandums filed by both the defense and the State; Now, Therefore, the court makes the following:

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UNDISPUTED FINDINGS OF FACT

1  
2       1.     On July 21, 2011, at 3104 School Street in Wenatchee, Chelan County,  
3 Washington, the regional SWAT team executed a search warrant on the residence of  
4 Richelle Metcalfe and Michael Metcalfe.

5       2.     Officers including Detective Josh Mathena, who were assigned to the  
6 Columbia River Drug Task Force, were at that location to assist in the execution of the  
7 search warrant. The search warrant involved an allegation that narcotics had been sold  
8 from the residence at that location and/or narcotics were located at that location.  
9

10       3.     During the execution of the search warrant, Detective Mathena was  
11 assigned to watch the perimeter of the property. Detective Mathena was standing in  
12 the area of the garage and shop on the property.  
13

14       4.     At approximately 9:15 a.m. the defendant, Carl Johnson, drove his vehicle  
15 onto the property and parked near the shop area. Mr. Johnson was not directed to that  
16 location by any law enforcement officer. Mr. Johnson voluntarily drove up onto the  
17 property and parked his car.

18       5.     Mr. Johnson was unaware of the presence of the SWAT team and other  
19 law enforcement officers on the property.  
20

21       6.     After his vehicle was parked, several members of the SWAT team  
22 approached Mr. Johnson's vehicle, spoke to him briefly concerning why he was at the  
23 property, and then indicated to Mr. Johnson that he was cleared and free to leave.

24       7.     Mr. Johnson chose to stay on the property because he wanted to contact  
25 the owner of the orchard at that location about possible work.  
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1 had any methamphetamine in the truck and Mr. Johnson replied he may have a  
2 methamphetamine smoking pipe in the truck. Detective Mathena asked Mr. Johnson to  
3 exit the vehicle. The time this request was made is disputed by Mr. Johnson.

4 3. Detective Mathena asked Mr. Johnson for permission to search the truck  
5 and read him the Ferrier warnings.

6 4. Mr. Johnson asked if he had to let Detective Mathena search his truck and  
7 Detective Mathena told him he did not. Detective Mathena told Mr. Johnson that based  
8 upon Mr. Johnson's statement that there was marijuana in the truck, that Detective  
9 Mathena could seek a search warrant to search the vehicle.

10 5. Mr. Johnson agreed to allow Detective Mathena to search the vehicle.

11 6. Mr. Johnson disputes that he received Ferrier warnings from Detective  
12 Mathena and that he was asked for consent to search the vehicle.

13  
14 CONCLUSIONS AS TO DISPUTED FACTS

15 1. The court concludes that Detective Mathena's testimony was more  
16 credible than Mr. Johnson's testimony with regard to the disputed facts. The court  
17 concludes that Mr. Johnson's testimony was inconsistent as to the purpose of his visit  
18 to the property. The court finds Mr. Johnson's demeanor changed during his testimony,  
19 that he was uncomfortable, hesitant and had pained look on his face, while at other  
20 times his testimony was free-flowing. Some of Mr. Johnson's testimony came from  
21 leading questions, but on all the critical facts he was on a defensive posture with his  
22 arms crossed across his chest and did not appear to be candid in his testimony.  
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1           2.     The court finds that Detective Mathena was forthright in his demeanor and  
2 testimony, including acknowledging what he did not remember, and including whether  
3 or not he had mentioned bringing a drug-sniffing dog for the purpose of circling the  
4 vehicle.

5           3.     The court finds that Mr. Johnson's hesitancy, defensiveness, and the fact  
6 that he could not remember if he had any prior contact with Detective Mathena when it  
7 was pretty obvious that Detective Mathena knew him does not make him a very credible  
8 witness.

9           4.     The court also concludes that in terms of the timing of how the disputed  
10 facts were presented, the testimony of Detective Mathena was more logical.

11           5.     The court concludes that Detective Mathena approached Mr. Johnson  
12 after he was already cleared by another officer and after Mr. Johnson had voluntarily  
13 chosen to stay in the area. Detective Mathena asked Mr. Johnson what he was doing  
14 there.

15           6.     The court further concludes that Detective Mathena then inquired about  
16 the drugs because of the information he had received from his Confidential Informant  
17 and based upon Detective Mathena's prior contact with Mr. Johnson involving narcotics.

18           7.     The court finds that Mr. Johnson did admit that he might have marijuana  
19 and that Mr. Johnson voluntarily consented to the search of his vehicle by Detective  
20 Mathena.

21           8.     The court concludes that Detective Mathena made no threat against Mr.  
22 Johnson, no guns were drawn, no one blocked Mr. Johnson's vehicle. Mr. Johnson  
23 could have left the location at any time and he chose to park there and remain there.

1 Mr. Johnson chose to answer questions asked by Detective Mathena when he was not  
2 seized or under arrest.

3 CONCLUSIONS OF LAW

4 1. The court concludes that the defendant's motion to suppress should be  
5 denied.

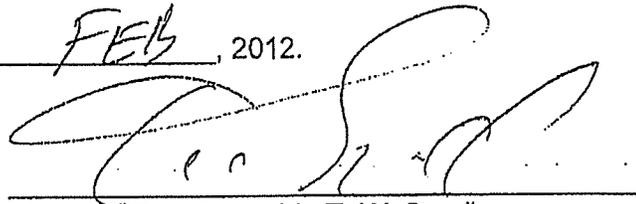
6 2. The court finds no constitutional violation since the original contact was  
7 voluntary, which then ripened into Terry stop, and upon the voluntary consent given by  
8 Mr. Johnson to search his vehicle, the evidence was lawfully obtained.

9 3. The court finds no coercion occurred. The officer went beyond the  
10 minimum requirement of the law by advising Mr. Johnson of his Ferrier warnings when  
11 Ferrier warnings are not required for a vehicle search.

12 4. The court concludes that the evidence obtained from the vehicle in  
13 connection with this search is admissible at trial and the defendant's motion to suppress  
14 is denied.

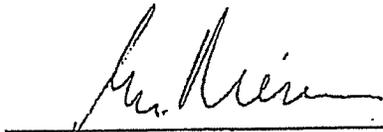
15 DATED this 13<sup>th</sup> day of FEB, 2012.

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The Honorable T. W. Small  
Judge of the Superior Court for the  
County of Chelan

Presented by:



Gary A. Riesen WSBA #7195  
Chelan County Prosecuting Attorney

1 Approved as to form for entry and notice  
2 of presentment waived this \_\_\_\_ day of  
3 \_\_\_\_\_, 2012.

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5 Bradley J. Drury WSBA # 36909  
6 Attorney for Defendant

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ERIC J. NIELSEN  
ERIC BROMAN  
DAVID B. KOCH  
CHRISTOPHER H. GIBSON

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JENNIFER J. SWEIGERT  
OF COUNSEL  
K. CAROLYN RAMAMURTI  
JARED B. STEED

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State v. Carl Johnson

No. 30757-3-III

Certificate of Service by email

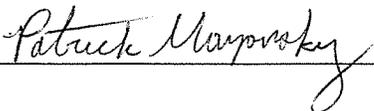
I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 17<sup>th</sup> day of October, 2012, I caused a true and correct copy of the **Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

Douglas Shae  
Chelan County Prosecuting Attorney  
[Prosecuting.attorney@co.chelan.wa.us](mailto:Prosecuting.attorney@co.chelan.wa.us)

Carl Johnson  
34 ½ N. Wenatchee Avenue  
Apt. 15  
Wenatchee, WA 98801

Signed in Seattle, Washington this 17<sup>th</sup> day of October, 2012.

X  \_\_\_\_\_