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STATE OF WASHINGTON
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Nº. 33647-2-II

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

STATE OF WASHINGTON
Respondent,

v.

REYES RUIZ,
Appellant.

REPLY BRIEF OF APPELLANT

Appeal from the Superior Court of Clark County,
Cause No. 05-1-01065-7
The Honorable John F. Nichols, Presiding Judge

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*ii. Mr. Ruiz does **not** argue that his statement should be suppressed. Mr. Ruiz argues that the doctrine of corpus delicti bars conviction of Mr. Ruiz based on his confession alone* 3

A. INTRODUCTION

Comes now appellant Reyes Ruiz and submits this brief in Reply to the State's Bried of Respondent.

B. REPLY

1. The State failed to address two of Mr. Reyes' arguments.

In his Opening Brief, Mr. Ruiz raised four arguments: (1) Mr. Ruiz was arrested without probable cause (Opening Brief, p. 6); (2) Mr. Ruiz has standing to challenge the search of the minivan (Opening Brief, p. 7); (3) the trial court erred in denying Mr. Ruiz's motion to suppress the evidence seized in the search of the minivan (Opening Brief, p. 9); and (4) there was insufficient evidence to convict Mr. Ruiz of possession of methamphetamine with intent to deliver (Opening Brief, p. 25).

In its Response Brief, the State addresses only two of Mr. Ruiz's arguments: whether or not the trial court erred in denying Mr. Ruiz's motion to suppress evidence (Brief of Respondent, p. 2), and whether or not there was sufficient evidence to convict Mr. Ruiz (Brief of Respondent, p. 16. The State failed to address whether or not probable cause existed to arrest Mr. Ruiz and apparently concedes that Mr. Ruiz has standing to challenge the search of the minivan.

However, as discussed below, in the two issues the State does address, the State mischaracterizes Mr. Ruiz's arguments.

2. <u>The State mischaracterizes the two arguments to which it does reply</u>.

i. Mr. Ruiz argues that the void between the exterior metal wall of the minivan and the interior paneling piece was not a part of the passenger compartment. Mr. Ruiz does ***<u>not</u>*** *argue that the police may only search the portion of the passenger compartment within the physical reach of the arrestee at the moment of arrest*

In addition to arguing that the use of the drug sniffing dog was an unreasonable extension of a search incident to arrest, exceeded the scope of a search incident to arrest, and constituted an overly intrusive method of performing a search of the passenger compartment of a vehicle incident to arrest, in section 3(b) and (c) of his Opening Brief **Mr. Ruiz argues that the area where the drugs were found is not part of the passenger area, and therefore not searchable by the police without a warrant**. Opening Brief, p. 21-24. Mr. Ruiz acknowledges that during the search of a vehicle incident to arrest of the driver the police may search the entire passenger compartment of the vehicle, including areas outside the immediate reach of the arrestee. Opening Brief, p. 11, citing *State v. Johnson*, 128 Wn.2d 431, 450-456, 909 P.2d 293 (1996), and *State v. Vrieling*, 144 Wn.2d 489, 28 P.3d 762 (2001).

However, on page 6 of the Brief of Respondent, the State asserts that,

> Both defendants, citing language in *State v. Boursaw*, 94 Wn.App. 629, 976 P.2d 130 (1999) argue that in a search of a vehicle incident to arrest of an occupant, an officer may not search the entire passenger compartment, but only that portion of the passenger compartment which is within the actual physical reach of the arrestee at the moment of arrest or immediately prior thereto, which has been referred to as the "wingspan" or "lunge area".

Not only is this statement in error, but it also mischaracterizes the purpose for which Mr. Ruiz discussed the *Boursaw* case in his Opening Brief. Mr. Ruiz discussed *Boursaw* in the context of determining what a constitutes a reasonable delay when an individual is arrested and the arresting officer calls a drug dog to the scene to search the arrestee's vehicle (Opening Brief, p. 15-17) and the proper scope of a search incident to arrest (Opening Brief, p. 18-21).

Mr. Ruiz does **not** argue that the police may only search the arrestee's "wingspan." Mr. Ruiz argues that the area in which the drugs were found is **not part of the passenger compartment and therefore not searchable without a warrant**, and that the police officers exceeded the scope of a lawful search incident to arrest.

*ii. Mr. Ruiz does **not** argue that his statement should be suppressed. Mr. Ruiz argues that the doctrine of corpus delicti bars conviction of Mr. Ruiz based on his confession **alone**.*

In his Opening Brief, Mr. Ruiz argues that because the search of the minivan was illegal, therefore requiring suppression of all evidence

found during the search, the only admissible evidence the State offered against Mr. Ruiz was his confession. Opening Brief, p. 25-26. Mr. Ruiz cites *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995) (a confession or admission, standing alone, is insufficient to establish the corpus delicti of a crime) and argues that the admissible evidence presented by the State (Mr. Ruiz's confession) fails to establish the corpus delicti of a crime and therefore there was insufficient evidence to convict Mr. Ruiz.

On page 16 of the Brief of Respondent, the State mischaracterizes Mr. Ruiz's argument: "The argument appears to be that because of the allegation of an illegal search that his statements to the officers have to be suppressed." Mr. Ruiz does **not** challenge the admissibility of his confession. Mr. Ruiz's argument is that the results of the search should have been suppressed, leaving Mr. Ruiz's confession as the only *admissible* evidence against him (Opening Brief, p. 26), and that his confession alone was insufficient evidence for conviction.

DATED this 1st day of August, 2006.

Respectfully submitted,

Reed Speir, WSBA No. 36270
Attorney for Appellant

CERTIFICATE OF SERVICE

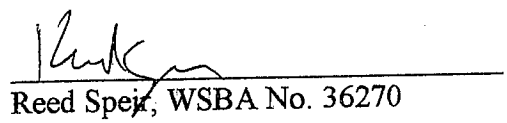
Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 1st of August, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Mr. Reyes Ruiz, DOC# 885057
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA. 98520

And, I mailed a true and correct copy of the Brief of Appellant and the Verbatim Report of Proceedings to which this certificate is attached, to

Michael C. Kinnie
Clark County Deputy Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666

Signed at Tacoma, Washington this 1st day of August, 2006.



Reed Speir, WSBA No. 36270

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