

64008-9

64008-9

NO. 64008-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

GREGORIO ORTEGA,

Appellant.

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2010 DEC 19 PM 3:05

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRIS WASHINGTON

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**BRIEF OF RESPONDENT**

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A. ISSUES

1. There is substantial evidence to support a trial court's CrR 3.6 findings if the evidence is sufficient to persuade a fair-minded, rational person of the truth of the finding. Here, the evidence established that based on his training and experience Officer McLaughlin observed numerous activities by the defendant that indicated the defendant was involved in three drug deals. Does substantial evidence support the trial court findings that the defendant appeared to be involved in narcotics transactions?

2. An arrest may be made upon the existence of probable cause of a crime. Here, McLaughlin's observations established probable cause for the felony crime of narcotics delivery and the misdemeanor crime of Drug Traffic Loitering. Did Officer McLaughlin's observations establish a basis to arrest the defendant?

3. The fellow officer rule allows for an officer who observes a crime to direct another officer to effectuate the arrest. Here, after establishing probable cause that a crime was committed, Officer McLaughlin radioed his "arrest team" to arrest the defendant. Does the fellow officer rule apply to arrests for all crimes?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Gregorio Ortega was charged by information with Violation of the Uniform Controlled Substances Act: Possession of Cocaine with Intent to Deliver. CP 7. The Honorable Chris Washington denied his CrR 3.6 motion to suppress. CP 80-82. A jury found Ortega guilty at trial. CP 39; RP 573. He now appeals his conviction. CP 71-79.

2. SUBSTANTIVE FACTS

Officer Chad McLaughlin and fellow Seattle Police Department Officers Hockett and Gaedcke organized an investigation into narcotics activity in the Belltown neighborhood of Seattle. RP 44-45, 101. The officers are part of the Community Police Team responding to business complaints of criminal activity in the area. RP 44-45.

On March 11, 2009, around mid-day, McLaughlin set up surveillance on the second floor of a local business near Western and Blanchard streets, a high-narcotics area. RP 17-18, 100; CP 80. Officer McLaughlin was able to view through a window to the street and people below. RP 17-18, 67-68. Hockett and

Gaedcke positioned themselves nearby as the arrest team.

RP 17-18, 109-11; CP 81.

McLaughlin has been trained in identifying street-level narcotics transactions. RP 14-15; CP 80. As a ten-year veteran of law enforcement, he has observed over 250 transactions and made over 125 arrests. RP 14.

During McLaughlin's surveillance, he saw Defendant Gregorio Ortega looking at various passers-by and walking aimlessly with Co-defendant Daniel Cuevas. RP 18, 50; CP 80-81. Eventually, after giving a head nod and making eye contact with people on the street, Ortega stopped and huddled in front of a pay phone with other men. RP 20-21; CP 81. McLaughlin saw Ortega make a hand-to-hand exchange and believed it was a narcotics transaction. RP 20-21, 26; CP 81. Ortega then made contact with two other people on the street. RP 20-27. A short time later, McLaughlin saw Ortega involved in two more similar hand-to-hand transactions that appeared consistent with drug deals. RP 26-27. McLaughlin did not see what, if anything, was transacted during the exchanges. RP 77-78. Each time Cuevas acted as a lookout. RP 21-27.

McLaughlin radioed to his arrest team in real time as he saw the apparent narcotics transactions. RP 101-02. After the third transaction, McLaughlin radioed that there was probable cause to arrest Ortega and Cuevas. RP 101-03; CP 81. Within seconds, Hockett and Gaedcke responded by patrol car to where McLaughlin said the suspects would be and arrested Ortega and Cuevas. RP 97-98; CP 81. At the scene, Hockett searched Ortega and found 2.5 grams of cocaine on him as well as \$780 in cash. RP 98; CP 81.

C. ARGUMENT

1. SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S FINDINGS OF FACT.

Substantial evidence must support the court's factual findings. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Substantial evidence is defined as "evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." Id. at 214. Unchallenged factual findings are verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

Ortega challenges the trial court's findings<sup>1</sup> related to the factual conclusion<sup>2</sup> that Ortega "appeared to engage in [ ] separate narcotic transactions." CP 81. He also challenges the court's findings<sup>3</sup> that the people involved in all three transactions with Ortega were "buyers." CP 81. Finally, Ortega challenges the court's description<sup>4</sup> of these three events as "transactions" or "narcotics transactions." CP 81. All of these findings were supported by the evidence.

Officer McLaughlin testified that he believed that Ortega's interactions with these three people on the street amounted to narcotics transactions. RP 26. He explained that he formed this opinion based on the totality of the circumstances that included the fact that this was a high narcotics area, the interactions were very brief, the items were exchanged in a clandestine manner, the interactions had Ortega huddling with others, and Ortega had an accomplice acting as a lookout during the interactions. Id. McLaughlin has observed about 250 narcotics transactions and has

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<sup>1</sup> Specifically, Ortega has challenged Findings of Fact (g), (h), (i), (j), (k), (l), (m), (p), and (q). Appellant's Brief at 20; CP 81.

<sup>2</sup> Findings of Fact (g). CP 81.

<sup>3</sup> Findings of Fact (h), (i), (j), (k), and (q). CP 81.

<sup>4</sup> Findings of Fact (g), (h), (j), (k), (l), (m), (p), and (q). CP 81.

training in identifying narcotics and drug traffic loitering. RP 14-16, 42-46.

McLaughlin explained that while he did not see money or items changing hands, these quick and secretive exchanges "were typical for drug transactions." RP 76-77. He knew one of the people Ortega interacted with as someone who appears to use drugs. RP 50-51. Moreover, McLaughlin said that it seemed that Ortega and his accomplice did not know the three people Ortega interacted with and that their quick eye contact and head nods were "very typical with drug transactions." RP 84. Ortega also showed furtive activity, looking up and down the street. RP 84. McLaughlin said that this eye contact and the manner in which Ortega walked during each of his three transactions indicated who the buyer was and who the seller in the transaction was. RP 84-85. As a result of all of these events, there was substantial evidence to sustain the trial court's factual findings that Ortega was involved in drug transactions and that the three people he interacted with were buyers in these narcotics transactions.

Ortega's argument that these findings cannot be substantiated because no money or narcotics could be seen should be rejected. This claim ignores the many details that established

that Ortega's activity involved drug transactions. Ortega's claim also discredits McLaughlin's ability to interpret these events through his training and experience. The trial court was in a position to evaluate the persuasiveness of this testimony and the other evidence admitted. By making its findings, the court clearly found McLaughlin's testimony credible. A fair-minded person would be persuaded with this evidence. Accordingly, there is substantial evidence that shows that Ortega was involved in apparent narcotics transactions.

2. THERE WAS PROBABLE CAUSE TO BELIEVE THAT ORTEGA COMMITTED A CRIME.

The trial court found that there was probable cause to believe that Ortega committed a crime. The court, however, did not clarify what specific crime was committed. Because there is probable cause for both felony narcotics delivery and misdemeanor Drug Traffic Loitering, there was a lawful basis to arrest Ortega.

“Probable cause for a warrantless arrest exists when facts and circumstances within the arresting officer's knowledge are sufficient to cause a person of reasonable caution to believe that a crime has been committed.” State v. White, 76 Wn. App. 801,

804-05, 888 P.2d 169 (1995) (quoting State v. Huff, 64 Wn. App. 641, 646, 826 P.2d 698 (1992). It is a felony to deliver narcotics or counterfeit controlled substances.<sup>5</sup>

The trial court found that Ortega appeared to engage in multiple apparent narcotics transactions. CP 81; supra § C.1. Based on McLaughlin's training and experience, Ortega's eye contact and head nods with passers-by were consistent with someone wanting to conduct a drug transaction. CP 80. Ortega and Cuevas made contact with a group of individuals. Id. The first hand-to-hand exchange involved Ortega and a buyer, who quickly left the area after the transaction. CP 81. A second narcotics buyer then stepped up to Ortega and Ortega made a quick hand-to-hand transaction with that buyer. Id. McLaughlin believed that Cuevas was acting as a lookout during these suspected narcotics transactions. Id. Soon after, Ortega was approached by a third

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<sup>5</sup> Delivery of Counterfeit Controlled Substance (Class B Felony) RCW 69.50.4011(2)(a); Delivery of Methamphetamine (Class B Felony) RCW 69.50.4011(2)(b); Delivery of Material in Lieu of a Controlled Substance (Class C Felony) RCW 69.50.4012(2); Delivery of Heroin or Cocaine (Class B Felony) RCW 69.50.401(2)(a); Delivery of Marijuana (Class C Felony) RCW 69.50.4011(2)(c); Delivery of Narcotics other than Heroin or Cocaine (Class B Felony) RCW 69.50.401(2)(a); Delivery of Narcotics from Schedule III-V or Non-narcotics from Schedule I-V (Class C Felony) RCW 69.50.401(2)(c-e); Selling for Profit a Controlled or Counterfeit Substance (Class C Felony) RCW 69.50.410(1).

person with whom Ortega did his final hand-to-hand transaction.

Id.

Ortega appeared to engage in three narcotics exchanges in a short period of time, where he was the seller. A person of reasonable caution who reviewed these facts would believe that Ortega was dealing narcotics. This conclusion would amount to probable cause that a felony was committed.

This case is similar to the facts of White, supra. White was a lookout person in what appeared to be a drug transaction. White, 76 Wn. App. at 803. The observing officer was using binoculars on the top floor of a parking garage, looking at the street below. Id. He saw White and a co-defendant on the sidewalk, where they were eventually approached by another man. Id. White directed the man to the co-defendant who took money from the man and dropped something on the ground. Id. The man picked up the object and put it in his mouth. Id. After this, White looked behind him, made hand movements with the co-defendant, and all three then walked in different directions. Id. The officer could not tell what, if anything, had passed between White and the co-defendant. Id. The Court found that based on the observing officer's narcotics training and experience in reviewing these facts, it appeared that

White was part of a drug transaction. Id. at 804-05. Accordingly, this Court held that these observations were sufficient to give police probable cause to believe that White had committed a felony. Id.

Our case involves a similar conclusion that Ortega had been involved in a drug transaction. In White the court relied on the officers training and experience to conclude that a drug transaction occurred. Id. While our case does not involve the same facts of an item being dropped or cash changing hands, our case involves three hand-to-hand transactions which direct the same conclusion as in White that a drug transaction occurred. CP 81; supra § C.2. Moreover, Ortega appeared to be the seller in these transactions, unlike White who was the lookout, like Cuevas was to Ortega. CP 80-81. Because the facts in our case establish that a drug transaction occurred, there is sufficient evidence to establish probable cause for felony delivery of narcotics.

Ortega maintains that there was not probable cause for a felony. He relies on State v. Neth, 165 Wn.2d 177, 196 P.3d 658 (2008). However, Neth is inapposite because there was no evidence that Neth ever engaged in a narcotics transaction. Id. Instead, police inappropriately relied on other suspicions to conclude that Neth was possessing drugs with the intent to deliver.

Id. However, no evidence was ever admitted that Neth was involved in an actual transaction. Id. In our case, as in White, there was ample evidence to show involvement in a narcotics transaction. CP 81. The evidence of Ortega's multiple narcotics transactions provides probable cause for a felony.

Because there was probable cause for a felony, the fellow officer rule applies. RCW 10.31.100; White, 76 Wn. App. at 804-05. Ortega was arrested pursuant to the fellow officer rule. Infra § C.3. Ortega agrees that an arrest is lawful, pursuant to the fellow officer rule and RCW 10.31.100, if the officer has "probable cause to believe that a person has committed or is committing a felony." Appellant's Brief at 8 (citing RCW 10.31.100) (emphasis in original). Because there is probable cause for a felony offense, Ortega's arrest was valid, and his claim of an unlawful search fails.

In the event this Court does not find that there was probable cause for a felony, there was still a lawful basis to arrest Ortega. It is uncontested<sup>6</sup> that there was probable cause for the crime of

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<sup>6</sup> Ortega instead argues that there was not probable cause for *felony* Violation of the Uniform Controlled Substances Act and argues that since only McLaughlin observed the misdemeanor crime of Drug Traffic Loitering, only McLaughlin could arrest Ortega based on this probable cause. Infra § C.3.

Drug Traffic Loitering, SMC<sup>7</sup> 12A.20.050. A person is guilty of drug-traffic loitering if he or she remains in a public place and intentionally solicits, induces, entices, or procures another to engage in unlawful conduct contrary to Chapter 69.50, Chapter 69.41, or Chapter 69.52, Revised Code of Washington. SMC 12A.20.050(B).

Violation of the Drug Traffic Loitering statute is a gross misdemeanor. SMC 12A.20.050(E). Ortega's repeated solicitations and subsequent narcotics transactions establish probable cause for this crime, as well. CP 81; supra § C.2. As such, there was a lawful basis to arrest Ortega.

3. THE FELLOW OFFICER RULE ALLOWED FOR THE OFFICER WHO WITNESSED THE CRIME TO DIRECT ANOTHER OFFICER TO ARREST ORTEGA.

The fellow officer rule provides that where police officers are acting together as a unit, the cumulative knowledge of all the officers involved in the arrest may be considered to decide whether there was probable cause to apprehend a particular subject. Staats v. Brown, 139 Wn.2d 757, 791, 991 P.2d 615 (2000). In other

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<sup>7</sup> Seattle Municipal Code.

words, an arresting officer has probable cause to arrest a defendant even if another officer actually observed the crime. White, 76 Wn. App. at 804-05 (holding that it was proper for an officer to arrest the defendant when another officer had established the probable cause by observing the defendant involved in narcotics transactions). The probable cause that is known to one officer is imparted to all of his or her fellow officers. See id.; State v. Maesse, 29 Wn. App. 642, 646-47, 629 P.2d 1349 (1981).

Accordingly, an arresting officer may not know the facts that form the basis of the probable cause, and yet make a valid arrest when directed to do so by a fellow officer. State v. Alvarado, 56 Wn. App. 454, 456-57, 783 P.2d 1106 (1989) (holding that an arresting officer with no first-hand knowledge of a crime had probable cause to arrest after being radioed by fellow officer who had observed a suspected narcotics transaction).

Under the same rationale, if a fellow officer has observed insufficient probable cause of a crime, the arresting officer relying on those observations lacks probable cause. State v. Gaddy, 152 Wn.2d 64, 70-71, 93 P.3d 872 (2004). The arresting officer who is reliant on the information provided to him or her by fellow officers or police agencies is limited by any deficiencies with that

information. State v. Nall, 117 Wn. App. 647, 650, 72 P.3d 200 (2003) (holding that there is no good faith exception under the fellow officer rule, when an arresting officer relies on erroneous information from fellow law enforcement).

The cumulative nature of the fellow officer rule means that an arresting officer is not just an independent observer, but has the observations of all officers imparted to the arresting officer in a joint investigation. See id. at 650-52; State v. Bradley, 105 Wn. App. 30, 39, 18 P.3d 602 (2001). Therefore, an arresting officer does not even need to testify in a suppression hearing, because other officers' observations can form the basis for the valid probable cause the arresting officer relied upon. Alvarado, 56 Wn. App. at 457-58. Essentially, the fellow officer rule makes the officers interchangeable, but reliant on the cumulative information known to them as a unit or agency.

McLaughlin was part of a Community Policing Team with Officers Hockett and Gaedcke. RP 101. The team organized so that McLaughlin would survey the area from the second floor window of a local business and communicate his observations to the "arrest team" of Hockett and Gaedcke, who were nearby in their police cars. RP 17-18, 109-11; CP 81. During the surveillance,

McLaughlin communicated his observations in real time over the radio to Hockett and Gaedcke. RP 101-02. After radioing the viewed drug transactions and establishing probable cause for a crime, McLaughlin directed the arrest team to Ortega's location to arrest Ortega. RP 101-02; supra § C.2. Hockett and Gaedcke effectuated the arrest as McLaughlin directed. RP 97-98.

The fellow officer rule imparted the probable cause established by McLaughlin's observations to Hockett and Gaedcke since they were in a joint investigation. Even though Hockett was at ground-level as part of the arrest team, he had the necessary probable cause from McLaughlin's upstairs visual observations to arrest Ortega. Since all three officers at the scene were working as a unit, each had a lawful basis to arrest Ortega pursuant to the fellow officer rule. Accordingly, Hockett's arrest of Ortega was valid.

a. The Fellow Officer Rule Applies To All Criminal Arrests.

Ortega does not contest the fact that the fellow officer rule applies to all felony offenses. RCW 10.31.100. However, Ortega

argues that RCW 10.31.100<sup>8</sup> authorizes a suspect to be arrested only by the officer who observed the misdemeanor. Thus, Ortega claims that the fellow officer rule does not apply to misdemeanors, and thus Ortega's misdemeanor arrest is unlawful.

This Court took the opposite view in Torrey v. City of Tukwila, 76 Wn. App. 32, 882 P.2d 799 (1994). In Torrey, undercover police officers were investigating violations of “standards of conduct” at an adult entertainment club in violation of Tukwila Municipal Code. Id. at 34-35. During the investigation, the undercover police officers observed a violation of the code that established probable cause for a misdemeanor. Id. at 37. The officers communicated this information to their sergeant who later that day entered the club and arrested Torrey, among others. Id. at 35. In a civil suit against the city, Torrey claimed that this arrest was unlawful under state law, because the arrest violated RCW 10.31.100. Id. at 39. Torrey claimed that the arresting officer had not observed the misdemeanor, and that the fellow officer rule did not apply to misdemeanor arrests. Id. This Court explained that the officers in this case were working together as an investigative

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<sup>8</sup> RCW 10.31.100 provides in part: “[an] officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer[.]”

unit, and thus “We have no difficulty applying the fellow officer rule to the facts of this case.” Id. This Court held that the fellow officer rule applies to RCW 10.31.100 and thus all misdemeanor arrests.

Ortega cites no cases that hold that the fellow officer rule does not apply to RCW 10.31.100. Instead, Ortega argues that since Torrey involved a federal civil rights claim, its holding should be disregarded by this Court. However, the case addressed whether the Tukwila police violated the federal rights of Torrey by making an unlawful arrest pursuant to state law. Id. at 38-39. Thus, this Court's holding that the fellow officer rule applies to RCW 10.31.100 is a valid interpretation of state law.

Our Supreme Court affirmed this Court's holding that the fellow officer rule may apply to RCW 10.31.100 in Gaddy, supra. In Gaddy, an arresting officer relied on information from the Department of Licensing to form the basis to arrest Gaddy on the misdemeanor charge of Driving While License Suspended, pursuant to an exemption<sup>9</sup> in RCW 10.31.100. Gaddy, 152 Wn.2d at 71. While the Supreme Court ultimately held that the

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<sup>9</sup> RCW 10.31.100(3)(e) creates an exception to the statute and allows “Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person...RCW 46.20.342, related to driving a motor vehicle while operator's license is suspended or revoked.”

Department of Licensing was not another police agency or fellow officer, and thus the fellow officer rule was not implicated, the Court indicated that had the information come from a fellow officer or police agency the fellow officer rule would apply to RCW 10.31.100. Id. The framework of their analysis is the understanding that the fellow officer rule applies to all crimes.

b. Ortega's Interpretation Of RCW 10.31.100 Leads To Absurd Results.

Ortega argues that the plain language of RCW 10.31.100 authorizes only the officer present when the misdemeanor was committed to make an arrest. In making this claim, Ortega asks this court to ignore the fact that the fellow officer rule applies to the statute. Torrey, 76 Wn. App. at 39; see Gaddy, 152 Wn.2d at 70-71; supra § C.3.a.

The court's purpose when interpreting a statute is to determine and enforce the intent of the legislature. City of Spokane v. Spokane County, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). Where the meaning of statutory language is plain on its face, the plain meaning must be given effect. Id. To discern the plain meaning of a provision, the entire statute is considered. Id.

Commonsense informs the analysis and absurd results are to be avoided in statutory interpretation. Tingey v. Haisch, 159 Wn.2d 652, 664, 152 P.2d 1020 (2007).

RCW 10.31.100 shows that the legislature intended to limit warrantless arrests for misdemeanors to crimes observed by police. While an officer can arrest a person for a felony based on probable cause from any source, the statute limits warrantless arrests for a misdemeanor when it was not observed by law enforcement. While there are exemptions<sup>10</sup> that allow for officers to make some misdemeanor arrests based on citizen information, generally a citizen cannot be arrested for a misdemeanor without a warrant based only on information provided by a citizen. RCW 10.31.100.

To accept Ortega's interpretation that the statute is meant to prohibit officers from executing misdemeanor arrests for crimes

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<sup>10</sup> RCW 10.31.100(1) (misdemeanors involving physical harm to people, property, trespass, or a minor's use of alcohol); RCW 10.31.100(2)(a) (misdemeanors involving violating a local protection order); RCW 10.31.100(2)(b) (misdemeanors involving violating a foreign protection order); RCW 10.31.100(2)(c) (misdemeanors involving domestic violence); RCW 10.31.100(3) (misdemeanors involving various traffic offenses); RCW 10.31.100(4) (misdemeanors involving driving offenses resulting in a collision); RCW 10.31.100(5) (misdemeanors involving various water vessels); RCW 10.31.100(6) (traffic infractions involving observations by other officers); RCW 10.31.100(7) (misdemeanors involving an act of indecent exposure); RCW 10.31.100(8) (misdemeanors involving violating an anti-harassment order); RCW 10.31.100(9) (misdemeanors involving interference with a health care facility); RCW 10.31.100(10) (misdemeanors involving firearm or weapon possession on school grounds.)

directly observed by other officers would lead to absurd results. For example, this interpretation would make it impossible to effectuate undercover or covert police operations where police observed a crime, unless it was a felony. In such a circumstance, only undercover officers could make the formal arrest of a suspect, instead of a supervising officer or other member of the task force.

Also, police often observe criminal activity or inadvertently come upon it, but may not be equipped with proper safety equipment or restraints to make a formal arrest. Police rely on fellow officers to assist in taking a suspect into custody for safety reasons. Under Ortega's interpretation of the statute, these officers would have to make their own arrests upon seeing misdemeanors committed, regardless of their ability to secure a safe arrest. This is unreasonable.

Moreover, under Ortega's rationale, if a suspect was resisting arrest on a warrant and then fled from that officer's custody, that officer whose arrest was resisted would not be able to rely on any fellow officers to arrest the suspect. Only he or she could lawfully arrest the suspect, since he or she was the one who was present for that misdemeanor crime. This is absurd.

Not allowing for an observing officer to rely on other officers to arrest a suspect for various misdemeanors that fall outside the statutory exemptions, like: criminal escape<sup>11</sup>, firearms charges<sup>12</sup>, or attempted commission<sup>13</sup> of various Class C felonies, serves no purpose but to threaten the safety of the officer and to complicate an otherwise lawful arrest. The legislature would never intend this result.

The holdings in Torrey and Gaddy are sound and well-reasoned. Since Torrey, the legislature has amended RCW 10.31.100 six times and another time after Gaddy. See Laws 2006 ch. 138, § 23; Laws 2000 ch. 119, § 4; Laws 1999 ch. 184, § 14; Laws 1997 ch. 66, § 10; Laws 1996 ch. 248, § 4; Laws 1995 ch. 246, § 20; Laws 1995 ch. 184, § 1; Laws 1995 ch. 93, § 1. It is an accepted rule of statutory interpretation that reenactment of a statute following a judicial interpretation of it is a legislative approval and adoption of the court's holding. Ellis v. Dep't of Labor & Indus., 88 Wn.2d 844, 848, 567 P.2d 224 (1977). The legislature clearly

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<sup>11</sup> Third Degree Escape, RCW 9A.76.130.

<sup>12</sup> Carrying a Firearm, RCW 9.41.060; Discharging a Firearm, RCW 9.41.230; Unlawful Display of a Firearm, RCW 9.41.270.

<sup>13</sup> Criminal Attempt, RCW 9A.28.020; Criminal Solicitation, RCW 9A.28.030; Criminal Conspiracy, RCW 9A.28.040.

intends for the fellow officer rule to apply to RCW 10.31.100. An interpretation of the statute to the contrary leads to absurd results.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Ortega's conviction.

DATED this 9<sup>th</sup> day of June, 2010.

Respectfully submitted,

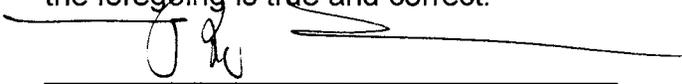
DANIEL T. SATTERBERG  
King County Prosecuting Attorney

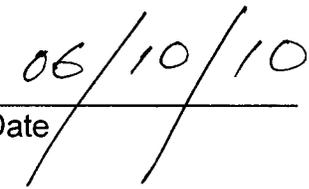
By:   
MICHAEL J. PELLICCIOTTI, WSBA #35554  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Susan Wilk, the attorney for the appellant, at Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. GREGORIO ORTEGA, Cause No. 640008-9, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
Name  
Done in Seattle, Washington

  
\_\_\_\_\_  
Date