

70929-1

70929-1

NO. 70929-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

---

STATE OF WASHINGTON,

Respondent,

v.

WYATT HENDERSON,

Appellant.

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2014 JUN 27 PM 3:32

---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

---

**BRIEF OF RESPONDENT**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

STEPHANIE KNIGHTLINGER  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS .....	2
2. SUBSTANTIVE FACTS .....	3
C. <u>ARGUMENT</u> .....	8
1. OFFICER BROWNLEE HAD A REASONABLE, ARTICULABLE SUSPICION THAT HENDERSON WAS INVOLVED IN CRIMINAL ACTIVITY .....	8
2. OFFICER BROWNLEE LAWFULLY FRISKED HENDERSON BASED ON SAFETY CONCERNS ..	18
D. <u>CONCLUSION</u> .....	21

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Miranda v. Arizona, 384 U.S. 436,  
86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)..... 8

Terry v. Ohio, 392 U.S. 1,  
88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)..... 9, 10, 11

Washington State:

State v. Anderson, 51 Wn. App. 775,  
755 P.2d 191 (1988)..... 10

State v. Avery, 103 Wn. App. 527,  
13 P.3d 226 (2000)..... 11

State v. Belieu, 112 Wn.2d 587,  
773 P.2d 46 (1989)..... 18

State v. Doughty, 170 Wn.2d 57,  
239 P.3d 573 (2010)..... 9, 10, 11

State v. Gatewood, 163 Wn.2d 534,  
182 P.3d 426 (2008)..... 9, 15, 16

State v. Glover, 116 Wn.2d 509,  
806 P.2d 760 (1991)..... 10, 11, 13, 14

State v. Harrington, 167 Wn.2d 656,  
222 P.3d 92 (2009)..... 18

State v. Hill, 123 Wn.2d 641,  
870 P.2d 313 (1994)..... 9

State v. Horrace, 144 Wn.2d 386,  
28 P.3d 753 (2001)..... 16, 17

<u>State v. Lee</u> , 147 Wn. App. 912, 199 P.3d 445 (2008), <u>review denied</u> , 166 Wn.2d 1016 (2009).....	11
<u>State v. Martinez</u> , 135 Wn. App. 174, 143 P.3d 855 (2006).....	10, 15
<u>State v. Parker</u> , 139 Wn. 2d 486, 987 P.2d 73 (1999).....	16
<u>State v. Pressley</u> , 64 Wn. App. 591, 825 P.2d 749 (1992).....	16, 17
<u>State v. Setterstrom</u> , 163 Wn.2d 621, 183 P.3d 1075 (2008).....	20
<u>State v. Wheeler</u> , 108 Wn.2d 230, 737 P.2d 1005 (1987).....	11
<u>State v. Williams</u> , 102 Wn.2d 733, 689 P.2d 1065 (1984).....	10

### Constitutional Provisions

#### Federal:

U.S. Const. amend. IV .....	9
-----------------------------	---

#### Washington State:

Const. art. I, § 7.....	9
-------------------------	---

### Rules and Regulations

#### Washington State:

CrR 3.6.....	2
--------------	---

**A. ISSUES PRESENTED**

1. Officers may conduct an investigatory stop when they have a reasonable, articulable suspicion that a suspect is involved in criminal activity. Officer Brownlee observed Henderson standing less than a foot away from another male in a position he recognized as an apparent hand-to-hand narcotics exchange in a park known for high incidence of narcotics trafficking. Henderson's actions in turning away as Brownlee approached further raised the officer's suspicion. Did the trial court properly conclude that Officer Brownlee lawfully stopped Henderson?

2. During an investigatory stop, an officer may conduct a protective frisk for weapons if the officer has a reasonable safety concern. A reasonable concern exists when an officer can point to facts that create an objectively reasonable belief that a suspect is armed and presently dangerous. Officer Brownlee observed Henderson display multiple pre-attack indicators of shifting his feet, moving his hands to his waist, and putting his hands under his shirt; in addition, Henderson admitted that he was "not sure" if he had any needles on him despite having used heroin earlier that morning. Brownlee had had suspects attempt to attack him with

needles. Did the trial court properly find that Officer Brownlee lawfully frisked Henderson?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

The State charged Appellant Wyatt Henderson with two counts of violation of the Uniform Controlled Substances Act for possessing heroin and methamphetamine. CP 1-2. The Honorable Barbara Mack presided over the bench trial in King County Juvenile Court. RP 1-2. In his CrR 3.6 motion, Henderson argued that Officer Brownlee unlawfully stopped and subsequently frisked him.<sup>1</sup> RP 93-105. The trial court denied Henderson's motion to suppress. RP 128.

The parties proceeded by way of a stipulated trial and the trial court found Henderson guilty as charged. RP 130-37. The trial court discussed different sentencing options, including whether Henderson would continue under supervision in Snohomish County drug court. RP 149-54. Henderson was in the process of opting out of the Snohomish County drug court program. Id. He was not

---

<sup>1</sup> Henderson also alleged that Brownlee's search of his backpack was unlawful. RP 93-106. The trial court denied this motion. RP 129. Henderson does not challenge the search of his backpack on appeal. App. Br. at 1.

eligible for a deferred disposition due to his prior convictions.

RP 154-55. The trial court imposed a disposition of credit for time served and the mandatory victim penalty assessment. RP 158.

## **2. SUBSTANTIVE FACTS.**

Seattle Police Officers Christopher Brownlee and Benjamin Archer were patrolling on bicycle in Seattle's Cal Anderson Park on July 2, 2011 in the late afternoon. RP 8-9.<sup>2</sup> Brownlee was assigned to the East Precinct Community Police team, a proactive unit that patrolled criminal "hotspots" known for narcotics trafficking. RP 7-9. Brownlee had worked for seven years as a police officer. RP 5. He had extensive training and experience recognizing street-level narcotics sales, including working undercover. RP 7; CP 61.

Brownlee and his partner patrolled Cal Anderson Park because it was a known criminal "hotspot" in 2011 for narcotics exchanges in methamphetamine and black tar heroin. RP 11. Several commercial and residential burglary rings also used the park to exchange stolen goods. Id. The park has fields and a playground to the south. RP 12-13. The northwest corner is more

---

<sup>2</sup> The verbatim report of proceedings consists of a single volume dated September 10, 2013 and October 18, 2013.

secluded because it is on a downslope from the other areas of the park. RP 12-13. The northwest corner was known to the officers for the highest incidence of narcotics and criminal activity.

RP 13-14.

Brownlee saw Henderson standing less than 12 inches from another male, Peter Hakala, in the secluded northwest corner of the park. RP 15. There were no others around Henderson or Hakala. RP 16. Their location allowed them to observe anyone approaching from other areas of the park. RP 14.

Henderson and Hakala stood facing each other with their hands down close to the centerlines of their bodies in what appeared about to be a hand-to-hand trade of narcotics for cash. RP 15. Officer Brownlee immediately recognized the hand-to-hand position as a typical narcotics exchange from his extensive experience in investigating street-level narcotics crimes. Id. Hakala had the tip of a Ziploc baggie protruding from his hand. RP 19. Again from his experience in investigating narcotics sales, Brownlee recognized it as the type of bag commonly used to package narcotics. Id.

As Brownlee approached on his mountain bike, Henderson turned away to the left, obscuring his hands. RP 20-21; CP 26.

Hakala's eyes-widened with a "darn-it" look and he turned away to the right, also hiding his hands. RP 17, 20-21; CP 62. Hakala switched the Ziploc baggie to his right hand, farther away from the officers. RP 24-25. Henderson's and Hakala's "zoning away" upon seeing the officers in an attempt to conceal their movements further piqued Brownlee's suspicions that Henderson was involved in criminal activity. RP 21.

Brownlee greeted Henderson with, "Hey, what are you doing?" RP 27. Henderson said he was "hanging out." Id. Brownlee asked if he knew Hakala and Henderson explained, "Oh, he is telling me how to stay away from tweakers." Id. Brownlee knew that "tweakers" referred to methamphetamine addicts and thought it odd that Henderson had used a savvy, street-drug reference. Id. Brownlee engaged Henderson in conversation by explaining that Henderson appeared young and asking him his age. RP 28. Henderson said he was 15 years old. Id. He also said his name was Tyler J. Hansen. Id.

Brownlee knew most of the homeless youth who frequented Capitol Hill, including Cal Anderson Park. RP 28-29. He did not recognize Henderson and suspected he may have been a runaway. RP 29. Henderson said he was from Stanwood. RP 31. Brownlee

then ran the false name that Henderson had given him and the date of birth to check if Henderson was a reported runaway. RP 32. Brownlee normally received a result in less than two minutes. RP 33.

Before Brownlee had even used his radio to run the name, Henderson shuffled his feet back and forth and his eyes were casting about from left to right. RP 34. Brownlee recognized these movements from his training and experience as pre-attack indicators. RP 34. He requested Henderson to stop moving and Henderson complied. Id. Henderson then moved his hands toward his waist. RP 35. Henderson's hands moved underneath his shirt. Id. Brownlee became concerned that Henderson might be reaching for a weapon. Id. He again asked Henderson to stop moving. Id.

Brownlee noticed that Henderson had the name "Peace" and a phone number written on the inside of his left bicep. Id. Brownlee knew Peace as a methamphetamine dealer who had been involved in a ring of burglaries. RP 36. Brownlee asked Henderson, "All right, so what kind of drugs are you using now?" Id. Henderson admitted he had used heroin that morning at approximately 10 a.m. RP 37. Brownlee asked if Henderson had any needles on him. Id. Brownlee had had addicts attempt to

attack him by brandishing an uncapped needle, or attempt to stab him with a crack pipe. RP 38. Henderson said he was not sure if he had any needles on him. RP 39. Brownlee became further concerned for his own safety and patted down Henderson for weapons. RP 39. Approximately four to seven minutes had passed from when Brownlee had first arrived. RP 42.

As Brownlee patted down Henderson's right side he felt a bulge and asked if it was Henderson's wallet. RP 40. Brownlee had not yet heard back from radio regarding the name check, which indicated that either Henderson had given him a false name or he had entered it incorrectly. Id. Henderson said the bulge was his wallet and allowed Brownlee to take it out. RP 41. Brownlee took the wallet out of Henderson's pants and noticed the tip of an identification card. Id. He asked if he could remove it. Id. Henderson responded, "I'd rather you didn't." RP 42. Brownlee then asked, "You lied to me about your name?" Id. Henderson admitted he had lied and that he had two outstanding warrants. Brownlee placed Henderson under arrest. RP 43.

Brownlee verified the warrants and read Henderson his Miranda rights.<sup>3</sup> RP 44. He searched Henderson and found a methamphetamine pipe in his right front pocket. RP 45. Henderson admitted that he had heroin in his back pocket. Id. Brownlee searched Henderson's backpack to inventory its contents prior to taking Henderson to the juvenile detention center. RP 47. Brownlee found 0.3 grams of heroin in a small bundle along with several used syringes and paraphernalia used to cook heroin in Henderson's backpack. RP 52.

**C. ARGUMENT**

**1. OFFICER BROWNLEE HAD A REASONABLE, ARTICULABLE SUSPICION THAT HENDERSON WAS INVOLVED IN CRIMINAL ACTIVITY.**

Henderson argues that Brownlee did not have the lawful authority to stop him. Henderson's argument fails. Brownlee had reasonable, articulable suspicion based on his observations of Henderson and his experience in narcotics crimes to perform an investigatory stop. The trial court's denial of the motion to suppress should be affirmed.

---

<sup>3</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The appellate court reviews the trial court's findings of fact on a motion to suppress for substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). A trial court's unchallenged findings are verities on appeal. Id. The trial court's legal conclusions are reviewed de novo. State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010).

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, warrantless seizures are per se unreasonable unless they fall within one of the exceptions to the warrant requirement. Id. One of these exceptions is the investigatory stop, which allows an officer to briefly stop and question an individual. Id. To justify an investigatory stop, a police officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Id. (quoting Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). The standard is whether the officer objectively has reasonable suspicion that the person has committed or is about to commit a crime. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

Reasonable suspicion necessary for an officer to briefly detain an individual is less than the facts and circumstances necessary for probable cause to arrest. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). A court must evaluate the totality of circumstances presented to the investigating officer and take into account the officer's training and experience in evaluating the reasonableness of an investigatory stop. Id. An officer may rely on experience in evaluating arguably innocuous facts. State v. Martinez, 135 Wn. App. 174, 180, 143 P.3d 855 (2006). A stop is not rendered unreasonable solely because the officer did not rule out all possibilities of innocent behavior before initiating the stop. State v. Anderson, 51 Wn. App. 775, 780, 755 P.2d 191 (1988). An officer need only have a well-founded suspicion that the defendant engaged in criminal conduct. Doughty, 170 Wn.2d at 62 (citing Terry, 392 U.S. at 21).

An investigative stop must last no longer than necessary to verify or dispel the officer's suspicion, and the investigative methods employed must be the least intrusive means reasonably available to effectuate the purpose of the detention. State v. Williams, 102 Wn.2d 733, 738-40, 689 P.2d 1065 (1984). The permissible scope of such a stop is determined by considering

1) the purpose of the stop, 2) the amount of physical intrusion on the suspect's liberty, and 3) the duration of the seizure. State v. Wheeler, 108 Wn.2d 230, 235, 737 P.2d 1005 (1987). The reasonableness of the officer's suspicion is determined by the totality of the circumstances known at the inception of the stop. State v. Lee, 147 Wn. App. 912, 917, 199 P.3d 445 (2008), review denied, 166 Wn.2d 1016 (2009).

Mere presence in a high crime area does not provide reasonable suspicion for officers to stop an individual. Doughty, 170 Wn.2d at 62. However, an officer's experience and knowledge that an area is known for narcotics trafficking or gang crime together with other particularized facts may justify an investigative stop. Glover, 116 Wn.2d at 514.

Here, the totality of circumstances present to Officer Brownlee, in light of his extensive experience in narcotics transactions, provided reasonable suspicion for an investigative stop of Henderson.<sup>4</sup> He saw Henderson in Cal Anderson Park, an

---

<sup>4</sup> The trial court concluded that Officer Brownlee made a social contact with Henderson. RP 128; CP 65. This may have been due to a misinterpretation of the question that Brownlee first asked Henderson as "Hey, how are you doing." RP 121. Brownlee's testimony and the trial court's findings of fact show that Officer Brownlee's first question for Henderson was, "Hey, *what* are you doing?" RP 27; CP 63 (*italics added*). The stop is properly reviewed as an investigative or Terry stop. The appellate court can affirm on any ground supported by the record. State v. Avery, 103 Wn. App. 527, 537, 13 P.3d 226 (2000).

area at that time in July of 2011 known for high narcotics activity, specifically as a “merchandise exchange” for methamphetamine and black tar heroin. RP 11; CP 62. Henderson’s specific location in the northwest area of the park was more secluded and known for the highest incidence of narcotics use and delivery. RP 14-15; CP 62.

Brownlee immediately recognized that Henderson and Hakala appeared engaged in a hand-to-hand narcotics exchange. RP 15; CP 62. They stood face-to-face, with their hands down close to the center-lines of their bodies. RP 18. Such a position allows concealment of the narcotics exchange from casual passers-by. RP 15; CP 62. Brownlee recognized this from his experience participating in undercover narcotics operations and arresting many individuals after observing a narcotics exchange. RP 15.

Further, Brownlee saw the edge of a Ziploc baggie, commonly used to package drugs, in Hakala’s hands. RP 19. Upon seeing Officers Brownlee and Archer approach on bicycle, Henderson turned away to the left and Hakala turned away to the right. RP 20-21; CP 62. Brownlee described this action as that each “zoned away.” RP 25. The posture allowed each to hide his

hands from Brownlee's view. RP 23-25. Prior to turning away, Hakala had a "darn-it" look on his face as the officers approached. RP 20; CP 62. When Brownlee next saw Hakala's hands, he had switched the baggie from his left to his right hand. RP 25; CP 63. Hakala's left hand, closer to the officers, now had a cell phone. Id. Brownlee also recognized these actions as indicative of attempts to conceal an in-progress narcotics exchange. Based on these facts, Brownlee lawfully stopped Henderson.

Comparison of this case to Glover is instructive. In Glover, officers patrolled an apartment complex on a routine bicycle patrol. 116 Wn.2d at 511. The complex was known to have a high incidence of narcotics and gang activity. Id. Officers observed Glover leave an apartment building and he acted suspiciously by turning away from the officers, walking faster, looking at the officers and looking away, and twisting around his baseball cap. Id. at 512. The officers did not recognize Glover as a resident of the apartment complex and stopped him to determine if he was trespassing. Id. They asked him if he lived at the complex. Id. Glover said that he did live there, but the officers did not believe him based on their familiarity with the residents of the complex. Id. at 514.

Immediately after the officers began to question Glover, one officer noticed a clear plastic bag protruding from Glover's right hand. Id. at 513. The officer knew that in that area plastic bags were commonly used to transport narcotics. Id. at 515. The officer questioned Glover further and had him open his hand to reveal a bag containing cocaine. Id. at 513, 515. Based on the officer's experience, the location in a high narcotics crime area, and Glover's conduct, the court found that the officers had performed a lawful investigatory stop. Id. at 515.

Here, as in Glover, Officer Brownlee lawfully stopped Henderson based on 1) Henderson's location in an area known for high narcotics activity; 2) Officer Brownlee's extensive experience in narcotics arrests; and 3) the particular actions of Henderson in concert with Hakala. Though there could have been an innocent explanation for Henderson's conduct, such as holding hands, Brownlee's experience indicated the action was more likely criminal. If the two had been simply holding hands in an area with a large, openly gay population (CP 62) the two likely would not have immediately turned away and attempted to conceal their hands. Regardless, Brownlee was not required to eliminate all

possible innocuous explanations prior to stopping Henderson.

See Martinez, 135 Wn. App. at 180.

Henderson argues that this case is similar to Gatewood, supra. Gatewood is distinguishable. In Gatewood, officers drove by a bus shelter and saw Gatewood's eyes widen upon seeing the patrol car. 163 Wn.2d at 540. He then twisted to the left like he was trying to hide something, left the bus shelter, and crossed the street mid-block. Id. The Supreme Court held that the investigatory stop was "premature and not justified by specific, articulable facts indicating criminal activity." Id. at 541. Key to this holding were the facts that Gatewood's location was not suspicious and the officers did not observe any apparently *criminal* actions. Id.

By contrast, Brownlee observed greater facts indicating a *criminal* action, a narcotics exchange. Brownlee saw Henderson in a secluded location known for narcotics crime. RP 14-15; CP 62. He observed Henderson and Hakala in a position typically used for hand-to-hand narcotics exchanges engaged in an apparent exchange. RP 14-15; CP 62. He saw a baggie in Hakala's hands of the type commonly used to package narcotics. RP 19. Hakala had a "darn-it" look upon seeing officers. RP 20; CP 62. Both Henderson and Hakala "zoned away." RP 20-21; CP 62. Both

attempted to conceal their hands. RP 23-25; CP 62. Unlike in Gatewood, Henderson's location was *suspicious* and his actions appeared *criminal*.

Henderson also argues that under State v. Parker, 139 Wn. 2d 486, 987 P.2d 73 (1999), Hakala's actions in concert with Henderson cannot be considered to support an investigatory stop. Henderson is incorrect. An officer may properly consider an associate's actions when those actions implicate the other in the criminal conduct. This is true in the context of a passenger in a vehicle, as in State v. Horrace, 144 Wn.2d 386, 388, 28 P.3d 753 (2001), and in the context of an apparent narcotics exchange, as in State v. Pressley, 64 Wn. App. 591, 825 P.2d 749 (1992).

In Horrace, a state trooper stopped a vehicle, in which Horrace was seated in the front passenger seat. 144 Wn.2d at 388. During the stop, the driver of the vehicle leaned to his right, tipping his shoulder down and making movements toward the center console of the vehicle in Horrace's direction. Id. at 389. The trooper believed the driver could have been concealing a weapon and may have given the weapon to Horrace or slid it inside Horrace's heavy leather jacket. Id. The trooper patted Horrace down and found a loaded pistol magazine in Horrace's jacket

pocket. Id. at 390. Horrace admitted his gun was underneath the seat. Id. The Washington Supreme Court upheld the trooper's pat-down of Horrace because the driver's actions toward Horrace along with the trooper's observations of Horrace provided reasonable, articulable suspicion. Id. at 400.

In Pressley, an officer observed Pressley and another female huddled outside of a market in an area known for high narcotics activity. 64 Wn. App. at 593-94. Their hands were chest-high and they appeared to be examining an object in Pressley's hand. Id. at 597. Pressley had an immediate reaction to the officer's presence of exclaiming, and both walked away in different directions. Id. This Court held that the officer had lawfully stopped Pressley based on the observed apparent narcotics transactions and the reaction to police. Id. 597-98.

Here, Brownlee reasonably relied on Henderson's and Hakala's actions in concert in performing an investigatory stop, as in Horrace and Pressley. Henderson's and Hakala's actions were not isolated from one another. Additionally, Brownlee observed greater facts indicating a narcotics exchange than in Pressley. He saw the plastic baggie protruding from Hakala's hand and their location within the park was secluded.

Given the totality of the circumstances observed by Brownlee and in light of his experience, Brownlee had specific, articulable facts to stop Henderson. The trial court properly denied Henderson's motion to suppress.

**2. OFFICER BROWNLEE LAWFULLY FRISKED HENDERSON BASED ON SAFETY CONCERNS.**

Henderson asserts that Brownlee did not have lawful authority to frisk him. Henderson's argument should be rejected. Brownlee had a reasonable safety concern to frisk Henderson based on Henderson's actions during the stop. The trial court correctly denied the motion to suppress.

An officer may perform a protective frisk of a suspect during an investigatory stop when the officer has specific and articulable facts to support a belief that a suspect may be armed and presently dangerous. State v. Harrington, 167 Wn.2d 656, 667-68, 222 P.3d 92 (2009). The officer need not know with absolute certainty that the suspect is armed. Id.

In deciding whether to frisk a suspect, an officer may make reasonable inferences based on his experience. State v. Belieu, 112 Wn.2d 587, 602, 773 P.2d 46 (1989). Generally, courts are

reluctant to substitute their judgment for that of patrol officers in the field. Id. Officers need have only a founded suspicion and a reason for the court to determine the detention was not arbitrary or harassing. Id. at 601-02.

Henderson made specific movements that Officer Brownlee recognized as pre-attack indicators. RP 34; CP 63. He shifted his weight back and forth and looked left and right. Id. Although Henderson did comply when Officer Brownlee asked him to stop moving, Henderson then moved his hands toward his belt and underneath his shirt. RP 35; CP 63. Brownlee knew that Henderson's hidden hands posed a great risk to his own safety. RP 21. Henderson could easily have been reaching for a weapon in his waistband. RP 35.

Henderson further admitted he had used heroin that morning and then provided the unlikely answer that he was "not sure" if he had any needles on him. RP 37-39. Given Brownlee's experience with addicts who had attempted to use uncapped needles as weapons against him, and Henderson's hiding his hands and displaying pre-attack indicators, Brownlee had specific and articulable facts on which to base a protective frisk.

Henderson relies on State v. Setterstrom, 163 Wn.2d 621, 183 P.3d 1075 (2008), for the proposition that nervousness and fidgeting do not allow an officer to frisk a suspect. Setterstrom is easily distinguishable. In Setterstrom, the suspect was at a Department of Social and Health Services office to obtain benefits, appeared under the influence of methamphetamine, and acted nervous. 163 Wn.2d at 626. Setterstrom was not in a “crime-ridden” area. Id. at 627. He did not make any specific movements that raised the officer’s suspicions. Id. He did not even stand up. Id.

By contrast, Henderson’s specific movements and statements justified a frisk given the reasonable inference that Henderson may have been armed, specifically with an uncapped needle. These facts were far beyond the simple nervousness while seated in a Department of Social and Health Services office, as in Setterstrom. This court should affirm the trial court’s conclusion that Officer Brownlee lawfully frisked Henderson.

**D. CONCLUSION**

For the foregoing reasons, this court should affirm  
Henderson's convictions.

DATED this 27<sup>th</sup> day of June, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
STEPHANIE KNIGHTLINGER, WSBA #40986  
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 Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Respondent's Brief in STATE V. WYATT HENDERSON, Cause No. 70929-1-I, 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.

W Brame  
Name  
Done in Seattle, Washington

6/27/14  
Date